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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 298.

THE COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. WILLIAM HILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 18, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 13, 1890.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1887, thereof, between United States *ex rel.* William Hill, relator, and The County Court of Scotland County and the Judges thereof, respondents, a manifest error hath happened, to the great damage of the said respondents, The County Court of Scotland County and the Judges thereof, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this third day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, dated as aforesaid.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk Circuit Court United States, Eastern Division of the Eastern Judicial District of Missouri,
By —— ——, *Deputy.*

Allowed by—
AMOS M. THAYER,
U. S. Dist. Judge, Sitting in the Circuit Court.

[Endorsed:] Nos. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill *vs.* County Court of Scotland Co. & the Judges thereof. Writ of error to the circuit court of the U. S., east. div., east. dist. of Missouri. Returned and filed third day of Nov., 1887. A. P. Selby, clerk.

Return to Writ.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 12th day of November, A. D. 1887.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Court.

2 UNITED STATES OF AMERICA:

To United States *ex rel.* William Hill, relator, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, wherein The County Court of Scotland County and the Judges thereof are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Amos M. Thayer, judge of the circuit court of the United States for the eastern district of Missouri, this third day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

AMOS M. THAYER,
Judge United States District Court, Eastern District of Missouri, Sitting in the U. S. Cir. Court.

Service of above citation acknowledged this 3d day of November, A. D. 1887.

JOHN H. OVERALL,
Att'y for Relator.

[Endorsed:] Nos. 1153 & 1287, consolidated. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill *vs.* County Court of Scotland Co. & the Judges thereof. Citation. Filed November 3d, 1887. A. P. Selby, clerk.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the sixteenth day of May, A. D. 1887, there was filed in said court a certain information for mandamus in words and figures following, to wit:

Information for Mandamus.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } sct:

To the honorable judges of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri:

Now comes William Hill and relates to the court that he is a citizen of the State of Illinois and that the County of Scotland is a municipal corporation created by and a citizen of the State of Missouri, whose financial affairs are managed by a county court, composed of judges who are citizens of said State; that on the 14th day of October, A. D. 1885, said relator recovered in the circuit court of the United States in and for the eastern district of Missouri a judgment against the said County of Scotland for the sum of forty-six thousand nine hundred forty-four dollars, with interest at 7 per cent. per annum, and costs taxed at — dollars; that said judgment was recovered upon coupons detached from bonds issued by the said county under authority of an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Company," approved February 9th, 1857; that said
4 county court and the judges thereof have failed and neglected to pay the said judgment, interest, and costs, or to levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax according to law for the purpose of paying the said judgment, interest, and costs, and to pay the same; that said county has no property out of which said judgment, interest, and costs can be levied, and that the said relator has no other adequate remedy at law.

Wherefore the relator prays the court to order and issue a writ of mandamus directed to the said County Court of Scotland County and to the judges thereof, commanding them to forthwith levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding, and to pay the same according to law.

By JOHN H. OVERALL,
His Attorney.

I, John H. Overall, on oath state that I am attorney for the relator, and that the matters and things alleged in the above information are true, as I verily believe.

JOHN H. OVERALL.

Subscribed and sworn to before me this 16th day of May, A. D. 1887.

[SEAL.] T. L. CRAWFORD,
Commissioner United States Circuit Court, Eastern Division, Eastern Judicial District of Mo.

Endorsed on said information for mandamus is the following:

"Nos. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill, relator, *vs.* County Court of Scotland County and the Judges thereof, respondents. Information for mandamus. John H. Overall, attorney for relator. Filed 16th day of May, A. D. 1887. A. P. Selby, clerk."

And upon said last-named day, to wit, the sixteenth day of May, A. D. 1887, the following, among other, proceedings were had and appear of record in said cause, to wit:

UNITED STATES *ex rel.* WILLIAM HILL, Relator, *vs.* COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, Respondents.	1153 & 1287.

Alternative Writ of Mandamus Ordered.

Now comes the relator, by attorney, and files information for a mandamus against respondents to pay the judgment heretofore rendered herein against said county and in favor of relator for the sum of forty-six thousand nine hundred and forty-four dollars, with interest thereon and costs, said judgment having been recovered on October 14th, A. D. 1885. On consideration whereof it is ordered that an alternative writ of mandamus issue herein, to be directed to said respondents, commanding them to forthwith levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding, and to pay the same according to law, or that they show cause before this court on the first day of the next term thereof, on the third Monday, the nineteenth day, of September next, why they refuse so to do.

And thereupon, on said sixteenth day of May, A. D. 1887, there was issued an alternative mandamus in words and figures following, to wit:

Alternative Mandamus.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *sct:*

6 The President of the United States of America to the County Court of Scotland County, Missouri, and the Judges thereof, Greeting:

Whereas it has been represented to our circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri that William Hill is a citizen of the State of Illinois, and that the County of Scotland is a municipal corporation created by and a citizen of the State of Missouri, whose financial affairs are managed by a county court composed of judges who are citizens of said State; that on the 14th day of October, A. D. 1885, said relator recovered in the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri a judgment against the said County of Scotland for the sum of forty-six thousand nine hundred and forty-four dollars, with interest at 7 per cent. per annum, and costs taxed at —— dollars; that said judgment was recovered upon coupons detached from bonds issued by the said county under authority of an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857; that said county court and the judges thereof have failed and neglected to pay the said judgment, interest, and costs, or that they levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax according to law for the purpose of paying the said judgment, interest, and costs and to pay the same, and that said demand has been refused; that said county has no property out of which said judgment, interest, and costs can be levied, and that the said relator has no other adequate remedy at law:

Now, therefore, you, the County Court of Scotland County and the Judges thereof, are hereby commanded to forthwith levy
7 and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax for the payment of said judgment, with interest and costs, including the costs of this proceeding, and to pay the same according to law, or that you show cause before this court on the first day of the next term thereof, to be begun and held in the city of St. Louis, in said district, on the third Monday, the 19th day, of September, A. D. 1887, why you refuse so to do.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 16th day of May, A. D. eighteen hundred and eighty-seven.

[SEAL.] Issued at office, in the city of St. Louis, Missouri, under the seal of said circuit court the day and year last aforesaid.

A. P. SELBY,
Clerk of said Court,
By T. L. CRAWFORD
Deputy Clerk.

Endorsed: "No. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill, relator, *vs.* The County Court of Scotland County and the Judges thereof, respondents. Alternative mandamus. Returnable to Sept. term, 1887. Returned and filed May 18th, A. D. 1887. A. P. Selby, clerk."

The return of the marshal, endorsed on said writ, is in words and figures following, to wit:

Marshal's Return.

UNITED STATES OF AMERICA, } *ss:*
Eastern Division of the Eastern Judicial District of Missouri, }

I hereby certify that I have executed this writ on the 17th day of May, A. D. 1887, by delivering to Joseph G. Vest, clerk of the county court of Scotland county, three certified copies of said writ, at
8 Memphis, in the county of Scotland, in above district.

J. E. D. COUZINS,
U. S. Marshal.
O. K. WHEELER, *Deputy.*

And afterwards, to wit, on the nineteenth day of September, A. D. 1887, there was filed in said cause a return of respondents to the alternative writ of mandamus in words and figures following, to wit:

Return of Respondents to Alternative Mandamus.

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA *ex Rel.* WM. HILL *vs.* THE COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF. } No. 1153 & 1287, Consolidated. Sept. Term, 1887.

To the honorable circuit court of the United States for the eastern district of Missouri:

Now come respondents and make this their return to the writ entitled alternative writ of mandamus herein issued and to them directed:

Respondents aver that under the constitution and laws of the State of Missouri the county court of Scotland county is a court of record composed of three members, a majority of whom constitute a quorum for lawful sessions of said court at times and in a manner prescribed by the general statute law of said State.

Respondents aver that they were not parties to the proceed-
9 ings described by relator in said writ wherein it is alleged that a judgment was rendered against Scotland county for the sum of forty-six thousand dollars; that under the organic and statute

laws of the State of Missouri, as authoritatively interpreted by the supreme court of the State of Missouri, before the date of relator's judgment and before the dates of the contracts in said judgment merged, said county court was and is a part of the State government, with specific powers, duties, and functions derived from the State and not from the county; that it is not the general or unlimited agent or representative of the county; that it can only bind the county (which is itself a *quasi* corporation invested with limited corporate powers) by virtue of authority derived from the State government and in obedience to State laws.

Respondents show that it is true, and was by relator confessed upon the record of said cause of William Hill against Scotland County, wherein the judgment described in said alternative writ was obtained and to which the said writ purports to be ancillary, that the said judgment was obtained upon interest coupons detached from bonds described in respondents' return herein made.

Respondents aver that neither at the date of the execution of the coupons in relator's judgment merged nor at any period prior to said date nor at the present time was there nor is there now any law in force in the State of Missouri requiring or authorizing the county court of Scotland county, in the State of Missouri, to levy any special tax upon the taxable property of or in said county, in the State of Missouri, for the purpose of paying the judgment in said relator's writ described.

Respondents aver that they did at the May term, 1887, of the county court of Scotland county, in the State of Missouri, make and cause to be entered upon the records of said court (as will fully appear from a duly certified copy of said order herewith filed, marked "Exhibit A," and made part of this return) an order levying upon all the property, real or personal, subject to taxation for State purposes in said Scotland county a tax for county purposes of one-half of one per cent. upon each and every one hundred dollars of the assessed value of such property.

Respondents aver that during each year prior to the year A. D. 1887 they or their predecessors in office have made similar levies; that the aggregate value of all property, real or personal, subject to taxation for State purposes in said Scotland county for the year A. D. 1887 was less than two millions of dollars.

Respondents show that the property subject to taxation for State purposes in Scotland county is owned in severalty by several thousand citizens of the State of Missouri and of other States, none of whom was a party to or is bound by the proceedings wherein the judgment of relator was obtained or by the contracts in said judgment merged; that under the laws of the State of Missouri in force now and under the laws of the State of Missouri in force at the date of the judgment in said cause numbered 1153 & 1287, consolidated, William Hill against Scotland County, to which the writ herein purports to be ancillary, and at the dates of the contracts shown by the record in said cause numbered 1153 & 1287 to have been merged in said judgment, said judgment can only be satisfied by these respondents with a warrant drawn by the county court of Scotland county,

in the State of Missouri, upon the county treasurer of said county, payable out of funds in the hands of said treasurer arising from taxes levied and assessed for county purposes, as hereinbefore set forth. Relator has not only made no demand upon the respondents for payment of his judgment, but admits the omission in his alternative writ.

11 Respondents admit that there are not at the present time sufficient funds in the hands of said treasurer, over and above cost of county government, to pay the entire amount of said judgment of relator, but verily believe that in due course of time the collections made by the county collector of said county and by him paid into said county treasury and duly placed to the credit of said fund will suffice to pay said judgment, which relator may collect and credit upon his aforesaid warrant or order.

Respondents show that it is and long has been the law in the State of Missiouri that all holders of county warrants upon the county treasurer should be paid same, with interest from date of presentation, in the order in which same might be presented.

Respondents aver that under the laws of the State of Missouri, of which they are sworn officers, they will commit grave crimes against the peace and dignity of the State of Missouri, subjecting each individual respondent to indictment, fine, and imprisonment, if, as a county court, they cause to be levied for the purpose of paying relator's judgment any other tax than that for county purposes, which they have levied, and out of the surplus of which fund, over and above the necessary expenses of the county government, the Legislature and the judiciary of the State of Missouri have, prior to the date of relator's judgment or of the contracts shown by the record to have been therein merged, clearly indicated that such judgments as relator holds must be satisfied; that on the 9th day of August, 1870, one William Dawson and one Isaac A. Forgner, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, a court of record then and at all times thereafter composed of three members, did cause to be entered upon the records of said court what purported to be an order of said court in words and figures as follows, viz:

12 At this day a petition was presented to the court, signed by Charles Mety, H. H. Downing, H. H. Montgomery, David Gwynne, R. P. Wayland, and divers other persons to the number of thirteen hundred and sixty-five, tax-payers and residents of said county, praying the court to subscribe the sum of two hundred thousand dollars stock to the Missouri, Iowa and Nebraska Railroad Company, payable in county bonds, due twenty-five years from date, bearing interest at the rate of eight per cent. per annum, the interest payable semi-annually, commencing from date of completion and of contract on the part of said railway company. Now, therefore, in consideration of the prayer of the petitioners and in pursuance and by virtue of law and the power that is given to the court to subscribe stock in said railway company, it is ordered by the court that the county of Scotland, in the State of Missouri, do hereby subscribe the sum of two hundred thousand dollars to the capital stock of the

Missouri, Iowa and Nebraska Railway Company, payable in the bonds of said county, of the denomination of one thousand dollars each, due twenty-five years from the date of issue, and bearing — eight per cent. per annum, the interest payable annually in the city of New York, on the terms and conditions following: One hundred thousand dollars of said bonds to be delivered to said railway company when said road shall have been graded, bridged, and tied and the track laid and the cars running through from Alexandria, Missouri, to a permanent depot located in one-half mile of the court-house in Memphis, in said county, and the remaining one hundred thousand dollars of said bonds to be delivered to said company when said company shall have completed their said line of road from Memphis to the west or north line of said county and the cars running over the same through said county, provided the said railroad shall be so located as to miss the west line
13 and strike the north line of said county; it shall do so at a point not exceeding four miles east of the northwest corner of said county. Said railroad shall be so built and the cars running through as aforesaid within two years from the date of this order; otherwise this subscription shall be null and void. And it is ordered, further, that Henry M. Gorin be, and he is hereby, appointed agent for said county of Scotland to subscribe the stock of said county upon the books of said company; to represent said county at the meetings of the stockholders of said company; to cast the vote of said county, and receive the dividend, and in order that the interests of the people may be fully guaranteed the court doth appoint as trustee Charles Mety, of said county, whose duty it shall be to receive from the clerk of the county court of Scotland county aforesaid the above-mentioned bonds as soon as the same are issued and to have the custody of the same, and as soon as the said railroad company shall have complied with the stipulations above set forth the said trustee shall deliver the aforesaid bonds to the treasurer or other authorized agent of said railway company, and shall at the same time receive from said treasurer or the agent of said company an equal amount in certificates of stock of said railway company, which said certificates of stock the same trustee shall deposit in the hands of the treasurer of said county of Scotland, taking his receipt for the same, which said receipt, together with a written report of his actions, shall be presented to the county court at the next meeting thereafter, and that said agent or trustee shall give bond in the sum of three hundred thousand dollars to the said county of Scotland, with security to be approved by the county court of said county, for the safe keeping of said bonds and the faithful performance of said trustee. It is further ordered
14 by the court that the county attorney of said county shall proceed to have said bonds printed or lithographed, and that the presiding justice of the county court of said county shall sign the same, and the clerk of the county court of said county shall make the proper attestation of his signature, and that said bonds shall have annexed coupons attached, and the trustee aforesaid shall, when he delivers said bonds to said railway com-

pany, detach all, any, or all coupons for interest that may have passed maturity and cancel and return the same to the treasurer of said county when his report as aforesaid is made, and shall enter upon the next maturing coupons of said bonds the date of delivery to said company, in order that said company shall receive interest only from the date they are entitled to receive said bonds. It is provided further that said railway company shall pay all the expenses of lithographing and printing said bonds.

Defendant avers that, without any other order or authority than is heretofore set forth, the said William Dawson did sign (during a vacation of said county court), as presiding justice of Scotland county court of Missouri, two hundred lithographed papers, each of which, excepting numbers of bond and date of counter-signature and delivery, was in words and figures as follows:

"$1,000. UNITED STATES OF AMERICA. No. 5.

"*Eight Per Cent. Railroad Bond.*

"*County of Scotland:* Twenty-five years.

"Know all men by these presents that the County of Scotland, in the State of Missouri, acknowledges itself indebted to the Missouri, Iowa & Nebraska Railway Company, a corporation existing under and by virtue of the laws of the States of Missouri and Iowa, formed by consolidation of the Alexandria and Nebraska City Railroad Company (formerly Alexandria and Bloomfield Railroad Company), of the State of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, in the sum of $1,000, which sum the
15 said county hereby promises to pay to the said Missouri, Iowa and Nebraska Railway Company or bearer, at the Farmers' Loan and Trust Company, New York, on the thirty-first day of December, A. D. 1895, together with interest thereon from the thirty-first day of December, 1870, at the rate of eight per cent. per annum, which interest shall be payable annually in the city of New York on the thirty-first day of December in each year as the same shall become due on the presentation of the coupon hereto annexed, this bond being issued under and pursuant to an order of the county court of said Scotland county for subscription to the stock of the Missouri, Iowa and Nebraska Railway Company, as authorized by an act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company,' approved February 9, 1857.

"In testimony whereof the said County of Scotland has executed this bond, by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. This done at the town of Mem-

phis, in the county of Scotland, in the State of Missouri, this first day of September, A. D. 1870.

"WILLIAM DAWSON,
"*Presiding Justice of the County Court of Scotland County, Mo.*

"Attest:
"[SEAL.] STERLING McDONALD,
"*Clerk of the County Court of Scotland County, Mo.*"

Countersigned and delivered this ——.

—— ——, *Trustee.*

That to said bonds were attached lithographed interest coupons, which, excepting dates and numbers, were in words and fig-
16 ures as follows:

"$80. MEMPHIS, Mo., *Sept.* 1, 1870.

"The County of Scotland, State of Missouri, will pay to the bearer on Dec. 31, 187–, at the Farmers' Loan and Trust Company, in New York, eighty dollars, being one year's interest on bond No. —, for $1,000.

"S. McDONALD,
"*County Clerk.*"

That after said Dawson, styling himself presiding justice of the Scotland county court of Missouri, had signed each of said bonds one Sterling McDonald, who had previously been elected clerk of the county court of the county aforesaid, signed each of said papers as clerk of Scotland county court of Missouri, and made upon each of said bonds the impression of a seal, purporting to be the seal of Scotland county court of Missouri, which seal had never been adopted by such court by any order entered upon its records; that thereafter, about September 1st, 1871, said McDonald delivered said pretended bonds and the lithographed coupons thereto then annexed, including among same each and every coupon in the relator's judgment merged, to one Charles Mety, who receipted for same, styling himself therein "trustee of Scotland county, Missouri." Defendant avers that although no subscription had ever been made by this defendant to the capital stock of the Alexandria and Bloomfield Railroad Company or any other railroad company, and although no part of the route of the Alexandria and Bloomfield Railroad Company was then in or through any part of said Scotland county, and although said proposed subscription by the said Dawson and Forgner, justices of the county court aforesaid, in the name of this defendant had never been accepted or the conditions or terms thereof complied with by said Missouri, Iowa and Nebraska Railway Company, and although there was no corporation known as the Alexandria and Nebraska City Railway
17 Company, nor was such pretended corporation formerly the Alexandria and Bloomfield Railroad Company, and although there was no lawful corporation known as the Iowa Southern Rail-

way Company, and although the Missouri, Iowa and Nebraska Railway Company was not a corporation existing under or by virtue of the laws of the States of Missouri and Iowa, and although there never was a lawful consolidation of said pretended corporations, as alleged in said bonds, and although said bonds were lithographed and made to contain said recitals by order only of F. M. Drake, and although said bonds were not actually printed until the year 1871 and were signed by said Dawson and McDonald long after the date inserted in said bonds, the said Mety, without other authority than the aforesaid entry, did, about the twenty-fifth of September, 1871, and the eleventh of December, 1871, deliver the aforesaid pretended bonds and coupons to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, in exchange for utterly worthless certificates of shares of stock purporting to have been issued by said company to this defendant.

That before said Mety, as trustee thus delivered said bonds at the dates aforesaid he wrote upon the face of each of said bonds numbered from 1 to 100 the words "Countersigned and delivered this the 21st of September, 1871," and upon each of said bonds numbered from 101 to 200, inclusive, the words "Countersigned and delivered December 11, 1871;" that after the making of the order aforesaid as entered upon the records of the county court of Scotland county, and after said bonds had reached the hands of said trustee, but before the delivery of either of said bonds or coupons, the said Missouri, Iowa and Nebraska Railroad Company executed and delivered to a trustee in said mortgage named a mortgage to secure negotiable bonds to the amount of six millions of dollars upon all the stock and prop-
18 erty, or franchises, present or prospective, of said railroad company; that the immediate effect of said mortgage was to render the said common stock of said railroad company utterly valueless. No part of the route of the Missouri, Iowa and Nebraska railway or of the Alexandria and Bloomfield Railroad Company at the respective dates of said orders or acts was within the county of Scotland, in the State of Missouri; that at no time prior or subsequent to the dates of either of said orders or acts or at or prior or subsequent to the dates of the execution and delivery of said pretended bonds or the acceptance by said Mety of said worthless certificates of stock did the county court of the county of Scotland, in the State of Missouri, cause any election to be held in said county to ascertain the sense of the tax-payers of said county as to any subscription to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other company or to ascertain the sense of said tax-payers as to whether any such subscription should be paid by issue of county bonds or by taxation or for or against paying any such subscription by direct taxation, because at no time at any election ever held in said county of Scotland have a majority of or any of the resident voters of said county of Scotland in the State of Missouri, voted in favor of any subscription by said county or by the county court of said county to the capital stock of the Missouri, Iowa and Nebraska Railway Company or of any other

company; that at no election (whether general or special election) ever held therein have two-thirds of the qualified voters of said county of Scotland, in the State of Missouri, ever assented to any subscription of stock by or to any loan of the credit of said county of Scotland to the Missouri, Iowa and Nebraska Railway Company or the Alexandria and Bloomfield Railroad Company; that the county court of said county of Scotland has never at any time
19 ordered any election to be held in said county of Scotland, in the State of Missouri, for the purpose of ascertaining the sense of the tax-payers thereof or in order to obtain the assent of two-thirds of the qualified voters of said county or a majority of the resident voters of said county to any of the acts or orders hereinbefore described; and that the plaintiff and the persons or corporate bodies from whom he received said coupons and every person or corporate body ever holding either of the coupons or bonds aforesaid had, since the occurrence thereof, actual as well as constructive notice of every fact in respondents' plea alleged; and that the record in the cause to which relator's writ is ancillary shows every fact herein pleaded by respondents, and especially that relator had, at the dates of the occurrence of each of said facts, actual notice thereof.

For further return to said writ, respondents aver that on the 9th day of August, 1870, Wm. Dawson and Isaac Forguer, claiming to be justices of the county court of the county of Scotland, in the State of Missouri, did cause to be made upon the records of said county court, a court of record then and at all times since said date composed of three members, an offer that if certain conditions precedent therein set forth were accepted and complied with the county of Scotland, in the State of Missouri, would subscribe two hundred thousand dollars to the capital stock of the Missouri, Iowa and Nebraska Railway Company in bonds of said county, and appointing one Charles Mety as trustee for said county to receive from the clerk of said court said bonds after the same might be issued, and to have custody of the same, and as soon as the said company accepted and complied with the aforesaid conditions precedent to deliver said bonds to the treasurer or other authorized agent of said company.

Respondents aver that, without any other authority or acts
20 than as hereinbefore set forth, said Dawson, during a vacation of the county court aforesaid, met with Sterling McDonald, clerk of the county court of said county, and signed, as presiding justice of Scotland county, Missouri, two hundred lithographed papers, by each of which the county of Scotland purported to acknowledge itself indebted to the Missouri, Iowa and Nebraska Railway Company in the sum of one thousand dollars, with eight per cent. interest thereon, evidenced by coupons thereto annexed; that among said coupons so annexed to said pretended bonds then signed by said Dawson was each of the coupons in the aforesaid judgment of relator merged; that said Sterling McDonald at the same time attested each of said pretended bonds over his signature as clerk of the county court of Scotland county, Missouri, and then made upon each of said pretended bonds the impression of a seal purporting to be the "seal of county court of Scotland county, Missouri," which

seal, though never adopted by any order entered upon the records of said court, had previously been used as the seal of said county court. Defendant admits that the said McDonald thereafter delivered said pretended bonds and coupons to one Charles Mety, who receipted for the same as trustee of Scotland county, Missouri, about the first of September, 1871, and who long thereafter delivered same to certain persons, purporting to be president and treasurer of the Missouri, Iowa and Nebraska Railway Company, but defendant avers that all of said acts and orders were without authority of law and void, and that about the 11th day of September, 1871, whilst said Mety still had in his custody the aforesaid pretended bonds and coupons, Levi J. Wagner and other citizens and tax-payers of said county of Scotland, in the State of Missouri, instituted as plaintiffs in the circuit court of said county of Scotland, in the State of Missouri, a suit against the said Charles Mety, Wil-
21 liam Dawson, David B. Cooper, and James E. Marquis, justices of the county court of said county; James S. Fullerton, and the Missouri, Iowa and Nebraska Railway Company, as defendants, the object and purpose of which suit was to enjoin the said Mety from delivering said bonds or coupons or any part thereof to the Missouri, Iowa and Nebraska Railway Company, or to any company, party, or person; to require the said Mety to deliver the same into court to be cancelled by said court, and to restrain and enjoin said justices of the county court of said county from appointing any agent to have, possess, or deliver said bonds or coupons or to act in the board of said railroad company, and to restrain said Fullerton, as treasurer of said county, from paying any of said pretended bonds or coupons out of any money coming to or in his hands as treasurer of said county, and to have said bonds and coupons and all orders of the said county court aforesaid relating thereto declared null and void; that said injunction was by E. V. Wilson, judge of the circuit court of said county of Scotland, in the State of Missouri, duly granted on the twenty-first of September, 1871, and said Mety and others enjoined and restrained in accordance with the prayer of the petition as hereinbefore set forth, and said Mety especially enjoined and restrained from delivering any of said bonds or coupons to any person or corporate body, all of which said Mety and each of the other defendants then had due notice, and which said injunction was made perpetual upon the final hearing thereof as hereinafter stated.

Respondents aver that among the bonds and coupons in said suit of Levi J. Wagner *et al. v.* Charles Mety *et al.*, involved and therein declared void, was each of the coupons in the writ of relator described and each of the bonds from which said coupons were detached.

Respondents aver that after the commencement of the afore-
22 said suit of Levi J. Wagner *et al. v.* Charles Mety *et al.* and after each of the defendants therein had been served with process and voluntarily appeared therein and filed in said court their answer to said petition of Levi J. Wagner and others therein filed a change of venue was granted in said cause from the county of Scotland aforesaid to the county of Shelby, in said State, and from the circuit court of said Scotland county to the circuit court of Shelby

county, in said State of Missouri, and the plaintiffs having filed an amended petition therein for the purposes and objects hereinbefore shown to have been set forth in the original petition, and in addition thereto praying that the successors in office of said justices of the county court and of said treasurer of the county of Scotland might, as well as said defendants, be forever restrained from making any orders or doing any acts tending to give currency or validity to either of said pretended bonds or coupons; defendant avers that the defendants in said cause of Levi J. Wagner and others against Charles Mety and others, after having filed their answer to said amended petition, withdrew said answer by leave of court, and thereupon the defendant, The Missouri, Iowa and Nebraska Railway Company, filed a demurrer to said amended petition, and the same coming on to be heard by the court was overruled by said court, and the other defendants having failed to answer or demur to said amended petition of Levi J. Wagner and others the same was taken as confessed as to them, and the defendant, The Missouri, Iowa and Nebraska Railway Company, having declined to make further answer, but electing to stand upon the demurrer aforesaid, final judgment was rendered in the cause in conformity to the prayer of the aforesaid petition, and, among other things, it was by the court adjudged that said Charles Mety be restrained and enjoined from delivering to the Missouri, Iowa and Nebraska Railway Company or to any other company or persons the bonds or
23 coupons in said suit involved (and including the coupons herein involved and the pretended bonds to which they were originally annexed); and it was further adjudged by said circuit court of Shelby county, in the State of Missouri, that said Charles Mety produce any and all of said bonds and coupons then in his possession before said court on the first day of the May term, A. D. 1875, of said circuit court, that the same might be cancelled; and it was further considered, adjudged, and decreed by said court that the defendant, The Missouri, Iowa and Nebraska Railway Company, be restrained and enjoined from recovering from said Charles Mety or from any other person acting as agent of said Scotland county the bonds or coupons aforesaid or either of same; and it was further adjudged and decreed by said circuit court of Shelby county that all the bonds and coupons aforesaid (including each of the coupons herein involved) were null and void by reason of the want of legal authority or power in the county court of Scotland county aforesaid to subscribe to the capital stock of said Missouri, Iowa and Nebraska Railway Company or to issue bonds in payment thereof; and it was further adjudged, ordered, and decreed that said Missouri, Iowa and Nebraska Railway Company cause all of the said bonds and coupons in the aforesaid amended petition of said Levi J. Wagner described and then in the possession of said company, its servants, employés, agents, or attorneys, to be produced before said court on the first day of the May term thereof, in the year 1875; and it was further considered and adjudged by said court that said plaintiffs recover their costs therein. One of said defendants, to wit, the Missouri, Iowa and Nebraska Railway Company, moved the court to set aside the finding

and judgment in said cause and grant defendants a new trial therein, which motion was by said court overruled and a new trial therein refused, the final judgment in favor of said plaintiffs and against
24 said defendants in said cause, as above recited, standing as the final judgment in said cause and unreversed by any court of competent jurisdiction of all the matters and things in said suit involved, which said suit was by the defendants taken by appeal from said circuit court of Shelby county, Missouri, to the supreme court of the State of Missouri, and the judgment and orders of said circuit court of Shelby county, Missouri, in said cause of Levi J. Wagner and others *v.* Charles Mety and others, made final by the judgment and decision of said supreme court; and the respondents herein aver the fact to be that said bonds and coupons have never passed into circulation; that the said Mety delivered said bonds and coupons, in defiance of the orders and decrees aforesaid, to certain persons claiming to be president and treasurer of said Missouri, Iowa and Nebraska Railway Company, at a point beyond the limits of the State of Missouri, after notice of the application for injunction aforesaid and after notice of the granting of a temporary injunction therein; that relator in this cause received the pretended coupons in his judgment merged after the judgments hereinbefore recited as having been rendered in said case of Levi J. Wagner and others against Charles Mety and others by courts having full jurisdiction of all the questions therein decided. — avers that — thus received each of said coupons in said — with full, actual notice of every fact in the respondents' return set forth.

Respondents aver that the record of this court in case numbered 1153 & 1287, consolidated, entitled Wm. Hill *vs.* Scotland County, to which cause the alternative writ herein is ancillary, shows every fact hereinbefore pleaded, and especially shows that relator, since the date of the occurrence of each said facts pleaded, had actual notice thereof, and that said case has been carried upon writ of error sued
25 out by Scotland county to the Supreme Court of the United States, wherein the said case is now pending.

Wherefore, having made a good and sufficient return, respondents pray to be dismissed with their costs herein.

HENRY A. CUNNINGHAM,
Att'y for Respondents.

Endorsed: "Nos. 1153 & 1287, consolidated. U. S. *ex rel.* William Hill *vs.* The County Court of Scotland County and the Judges thereof, respondents. In the circuit court of the U. S., E. D. of eastern district of Missouri. Return of respondents to alternative writ of mandamus. Filed Sept. 19, 1887. A. P. Selby, cl'k. Henry A. Cunningham, att'y for respondents."

And afterwards, to wit, on the twenty-third day of September, A. D. 1887, there was filed in said cause a demurrer in words and figures following, to wit:

Demurrer to Return of Respondents.

In the United States Circuit Court for the Eastern Division of the Eastern Judicial District of Missouri. September Term, 1887.

THE UNITED STATES OF AMERICA *ex Rel.* WILLIAM HILL
vs.
THE COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF. } Nos. 1153 & 1287, Consolidated.

Now, at this day, comes the relator, by his attorney, and demurs to the return of defendants herein, and for grounds of demurrer says that the facts stated in said return show no cause why the defendants should not obey the commands of the writ issued herein.

F. T. HUGHES &
HOUGH, OVERALL & JUDSON,
Att'ys for Relator.

26 Endorsed: "Nos. 1153 & 1287, consolidated. U. S. *ex rel.* Hill *vs.* County Court of Scotland County & Judges thereof. Demurrer. Filed Sept. 23, 1887. A. P. Selby, cl'k. F. T. Hughes & Hough, Overall & Judson, att'ys for rel."

And afterwards, to wit, on the twenty-eighth day of October, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Demurrer to Return of Respondents Heard and Submitted.

UNITED STATES *ex Rel.* WILLIAM HILL, Relator,
vs.
COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, Respondents. } 1153 & 1287.

Now come the parties, by their attorneys, and the demurrer of relator to the return of respondents to the alternative writ of mandamus herein is argued by counsel and submitted and by the court taken under advisement.

And afterwards, to wit, on the thirty-first day of October, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Demurrer Sustained. Order for Peremptory Mandamus.

UNITED STATES *ex Rel.* WILLIAM HILL, Relator,
vs.
COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, Respondents. } 1153 & 1287.

Now come the parties, by their respective attorneys, and the court, having considered the demurrer to respondents' return to the alterna-

tive writ of mandamus, finds the law thereon for the relator and orders that said demurrer be, and the same is hereby, sustained, respondents excepting to the action of the court in sustaining said demurrer.

And said respondents electing to abide by their said re-
27 turn, it is now ordered, on motion of said relator, that a peremptory writ of mandamus issue herein, to be directed to said respondents, commanding them to forthwith levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax for the payment of the judgment rendered October 14th, 1885, in favor of relator and against said county for the sum of forty-six thousand nine hundred and forty-four dollars, with interest thereon, and costs, including the costs of this proceeding, and to pay the same according to law, and that they certify perfect obedience to said writ to this court on the first day of the next term thereof, to be begun and held at the city of St. Louis on the third Monday, the 19th day, of March, A. D. 1888.

And thereupon a peremptory mandamus was issued in words and figures following, to wit:

Peremptory Mandamus.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *sct:*

The President of the United States of America to the County Court of Scotland County, Missouri, and the Judges thereof, Greeting:

Whereas it has been represented to our circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri that William Hill is a citizen of the State of Illinois, and that the county of Scotland is a municipal corporation, created by and a citizen of the State of Missouri, whose financial affairs are managed by a county court composed of judges who are citizens of said State; that on the 14th day of October, A. D. 1885, said relator recovered in the circuit court of the United States in and for
28 the eastern division of the eastern judicial district of Missouri a judgment against the said County of Scotland for the sum of forty-six thousand nine hundred and forty-four dollars, with interest at 7 per cent. per annum, and costs, taxed at — dollars; that said judgment was recovered upon coupons detached from bonds issued by the said county under authority of an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857; that said county court and the judges thereof have failed and neglected to pay the said judgment, interest, and costs, or that they levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax according to law for the purpose of paying the said judgment, interest, and costs, and to pay the same, and that said demand has been refused; that said county has no property out of which said

judgment, interest, and costs can be levied, and that the said relator has no other adequate remedy at law:

Now, therefore, you, the County Court of Scotland County and the judges thereof, are hereby commanded to forthwith levy and cause to be collected upon all the real estate and personal property in said county subject to taxation a tax for the payment of said judgment, with interest, and costs, including the costs of this proceeding, and to pay the same according to law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 1st day of November, A. D. eighteen hundred and eighty-seven.

[SEAL.] Issued at office, in the city of St. Louis, in said district, under the seal of said circuit court, the day and year last aforesaid.

A. P. SELBY,
Clerk of said Court,
By T. L. CRAWFORD,
Deputy Clerk.

29 Endorsed: "Nos. 1153 & 1287. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill, relator, *vs.* The County Court of Scotland County and the Judges thereof, respondents. Peremptory mandamus. Returnable to March term, 1888."

And afterwards, to wit, on the third day of November, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

Citation Signed. Appeal Allowed.

UNITED STATES *ex Rel.* WILLIAM HILL, Relator,
vs.
COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, Respondents. } 1153 & 1287.

Now come the respondents, by attorney, and present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said relator to be and appear at a Supreme Court of the United States to be begun and held at the city of Washington, D. C., on the second Monday of October next, which said writ of error is allowed and said citation signed by the judge; and said respondents also present to the court a bond in the penal sum of one thousand dollars, which bond is approved and ordered to be filed and made part of the record herein; and on motion it is ordered that a supersedeas be awarded staying further proceedings upon the mandamus herein.

Said bond is in words and figures following, to wit:

30 Know all men by these presents that we, J. Y. McClintock, Thomas McAllister, John M. Jayne, M. V. Leslie, and Thos. H. Wagner, are held and firmly bound unto William Hill, the re-

lator in case Nos. 1153 and 1287, consolidated, entitled U. S. *ex rel.* William Hill *vs.* The County Court of Scotland County and the Judges thereof, respondents, in the full and just sum of one thousand dollars, to be paid to the said William Hill, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 3rd day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at the September term, 1887, of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, in a suit depending in said court between The United States *ex rel.* William Hill, relator, and The County Court of Scotland County and the Judges thereof, respondents, a final order or judgment was rendered against the said County Court of Scotland County and the Judges thereof, respondents, and the said respondents, The County Court of Scotland County and the Judges thereof, having obtained a writ of error of the said court to reverse the final order or judgment in the aforesaid suit, and a citation directed to the said United States *ex rel.* William Hill, relator, citing and admonishing said relator to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said County Court of Scotland County and the Judges thereof shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

J. Y. McCLINTOCK.	[SEAL.]
THOMAS McALLISTER.	[SEAL.]
JOHN M. JAYNE.	[SEAL.]
N. V. LESLIE.	[SEAL.]
THOS. H. WAGNER.	[SEAL.]

Approved by Amos M. Thayer, U. S. dist. judge, as a supersedeas bond.

[Endorsed:] Nos. 1153 & 1287, consolidated. United States circuit court, eastern division of the eastern judicial district of Missouri. United States *ex rel.* William Hill *vs.* The County Court of Scotland Co. & the Judges thereof. Bond, $1,000.00. Filed third day of Nov., 1887. A. P. Selby, clerk.

31 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES *ex Rel.* WILLIAM HILL
vs.
SCOTLAND COUNTY COURT. } 1153 and 1287.

Opinion of the Court on Demurrer to Respondents' Return, October 31, 1887.

THAYER, *D. J.* (orally):

In cases 1153 and 1287, consolidated, The United States *ex rel.* William Hill *vs.* Scotland County, the demurrer to the respondents' return to the alternative writ of mandamus will be sustained.

In this case, omitting the introductory parts of the return, the respondents say "that at the date of the execution of the bonds on which the judgment in the case was rendered there was no law of the State of Missouri, and is no law at the present date, authorizing them to levy any special tax for the purpose of paying the judgment or for the purpose of paying the bonds."

They say, further, "that in May, 1887, they levied a tax for county purposes of five mills upon each one hundred dollars of an assessed valuation of less than two million dollars, and that their predecessors had levied a similar tax in previous years; that under the State laws now and heretofore in force the relator's judgment can only be paid by warrants drawn on the county treasury payable out of taxes levied for county purposes, and that the treasurer has no funds, and that the result would be, if they obeyed the writ—that they would be guilty of grave crimes and misdemeanors under the laws of the State of Missouri."

32 This part of the return is obviously an insufficient plea to an alternative writ issued to enforce the payment of a judgment against the county. For the most part it is a mere recital of the construction placed by the respondents upon certain general laws of the State which the court is bound to take notice of as well as to construe. It would have been more appropriate to have moved to quash the alternative writ if the reasons stated in this part of the return are valid reasons why the peremptory writ should not issue. The judgment already rendered determines the validity of the bonds merged therein for all the purposes of a proceeding by mandamus to enforce its payment and that judgment is not open to an attack in this supplementary proceeding, although the respondents were not county judges when it was rendered. That proposition is settled beyond cavil in the cases of The Supervisors against The United States (4th Wallace, 435) and Mayor *vs.* Lord. (9th Wallace, 409.)

Ralls County Court *vs.* U. S., 105 U. S., 733.

The bonds being valid, and it having been necessarily so determined before the entry of the judgment, there is no doubt whatever that under the laws of the State as they existed when the bonds

were negotiated the county court had ample authority to levy a tax to any amount to pay the same.

The supreme court of Missouri in the case of The State at the relation of Aull *vs.* Shortridge (56 Mo., 130) so held, citing section 34, page 429, Revised Statutes of 1855, which remained the law, as the court say, until after 1874 and until after the date of the issue of these bonds, and appears as section 21, page 306, Wagner's Statutes, edition of 1872.

Furthermore, at the time these bonds were issued the county courts had a general power "to audit and settle all demands against the county" and "to levy such sums as were annually necessary to defray the expenses of the county." (Wagner's Statutes, sec. 9, p. 441, and sec. 165, p. 1193.)

33 If the county court had power to levy a tax to pay the bonds when they were issued that power has not been and could not be subsequently withdrawn so long as the bonds are outstanding and unpaid, as has been many times held. Van Hoffman *vs.* The City of Quincy (4th Wallace, p. 535); City of Galena *vs* Amy, 5th Wallace, p. 705; Supervisors *vs.* U. S., 4th Wallace, 435; Butz *vs.* The City of Muscatine, 8th Wallace, 575, and Riggs *vs.* Johnson, 6th Wallace, 184, and numerous other cases.

In the face of these decisions it is idle for the respondents to say that they have no power to levy a special tax to pay the judgment, or to say that they made a levy of five mills on the dollar in May last for county purposes and can make no further levy. It is not shown whether the rate of taxation for county expenses for 1887 had been fixed before the alternative writ was served, but if it had been no reason is perceived why an additional levy to pay the judgment might not have been ordered and extended on the tax book.

The laws of this State, section 6805 and 6806, Revised Statutes of 1879, simply direct the county judges to fix the rate of county taxation as "soon as may be after the assessor's book is corrected and adjusted."

Sections 6731 and 6710 of the Revised Statutes of 1879 provide in substance that a failure to deliver the assessor's book in time to the county court does not invalidate the assessment, and that the levy is not invalidated by any informality in making the assessment or the tax list or on account of the assessment not being completed within the time required by law. The provisions in the revenue law as to the time when the various acts shall be done seem to have been made by the statute merely directory. But however this may be, an order of this court made in a case that is clearly within its jurisdiction is, I apprehend, ample protection to the defendants. (Riggs *vs.* Johnson, 6th Wallace, 193.)

34 The balance of respondents' return merely repeats two of the pleas contained in the second amended answer on which the case was originally tried and contains matter tending to show the invalidity of the bonds. Those pleas were either held bad in point of law or the proof failed to support them (and it matters not which was the case), as the validity of the bonds cannot be retried

in this proceeding. (Supervisors *vs.* United States; Mayor *vs.* Lord, *supra.*)

The demurrer will therefore be sustained.

35 UNITED STATES OF AMERICA,
Eastern Division of the
Eastern Judicial District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in cases Nos. 1153 & 1287, consolidated, of United States *ex rel.* William Hill, relator, against The County Court of Scotland County and the Judges thereof, respondents, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 12th day of November, in the year of our Lord eighteen hundred and eighty —.

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

Endorsed on cover: E. Missouri C. C. U. S. No. 298. The County Court of Scotland County and the Judges thereof, plaintiffs in error, *vs.* The United States *ex rel.* William Hill. Filed November 18th, 1887.

Office Supreme Court U. S.
FILED.
APR 7 1891
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States,

OCTOBER TERM, 1890.

No. 298.

THE COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF, PLAINTIFFS IN ERROR.

VS.

THE UNITED STATES EX REL WILLIAM HILL, DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Eastern District of Missouri.

HON. AMOS M. THAYER,
District Judge, sitting as Circuit Judge.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

JOHN C. MOORE,
Attorney for Plaintiffs in Error.

In the Supreme Court of the United States,

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HON. AMOS M. THAYER,
District Judge, sitting as Circuit Judge.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

JOHN C. MOORE,
Attorney for Plaintiff's in Error.

STATEMENT.

September 1, 1870, the County Court of Scotland County, Missouri, without a vote of the people, issued two hundred thousand dollars in bonds to the Missouri, Iowa and Nebraska Railway Company, due in 1895, with twenty-five interest coupons attached to each of these bonds of eighty dollars each.

On a number of these coupons the Relator, October 14, 1885, in the Circuit Court for the Eastern District of Missouri, obtained judgment against the county for $46,000. The county appealed to this court, and on November 14, 1889, the judgment of the circuit court was affirmed, (132 U. S. 107). From the court below the Relator obtained an alternative writ of mandamus against Respondents, the county court justices, to compel them to levy a tax to pay the judgment. (Page 5, Record.)

Respondents made return, (P. 6, Record) to which Relator demurred, (P. 17, Record), which demurrer the court sustained, and Respondents electing to abide by their return, the court made a peremptory order to levy the tax, and Respondents bring the case here by writ of error.

There is but one question involved, viz: Was the county court of Scotland county, Missouri, on the 1st day of September, 1870, limited in their power to levy a tax to one half of one per cent. or did they have an unlimited power to tax to pay these bonds and coupons?

This question arose in the following manner:

Respondent's return (page 7, record), contains these words:

"Respondent's aver that neither at the date of the execution of the coupons in Relator's judgment merged,

nor at any period prior to said date, nor at the present time was there nor is there now, any law in force in the State of Missouri, requiring or authorizing the County Court of Scotland County, in the State of Missouri, to levy any special tax upon the taxable property of or in said county, in the State of Missouri, for the purpose of paying the judgement in said Relator's writ described. Respondents aver that they did at the May term, 1887, of the county court of Scotland county, in the State of Missouri, make and cause to be entered upon the records of said court (as will fully appear from a duly certified copy of said order herewith filed marked "Exhibit A," and made part of this return), an order levying upon all the property, real or personal, subject to taxation for state purposes in said Scotland county, a tax for county purposes of one-half of one per cent. upon each and every one hundred dollars of the assessed value of such property."

They also aver that during each year prior to 1887 the levies had been made to that limit, and that the judgment could only be paid out of taxes levied and assessed for county purposes, that there are not now funds to pay the same, and that Respondents would violate the law to levy a greater amount than one half of one per cent.

To this return the demurrer was made by Relator

and sustained by the Court.

ASSIGNMENT OF ERRORS.

1st. The court erred in construing a statement of fact in the return as a conclusion of law [page 21, Record], in these words:

"For the most part it is a mere recital of the construction placed by Respondents upon certain general laws of the State which the court is bound to take notice of as well as construe."

2nd. The court erred in construing the law as follows: [page 21, Record].

"There is no doubt whatever that under the laws of the State as they existed when the bonds were negotiated the county court had ample authority to levy a tax to any amount to pay the same."

3d. The court erred in making the premptory order for the levy of taxes, because the truth of the return was admitted by the demurrer.

4th. Because the court below was without power to make an order for levy of taxes unless the statute of of Missouri authorized it.

5th. Because the statute of Missouri not only did not authorize the levy of taxes, but actually forbid it.

The following statement of the enactments of laws and of the occurrence of certain facts will materially aid in understanding the position Respondents occupy.

The charter of the Alexandria & Bloomfield Railroad Company was granted February 9, 1857, (Laws p. 94). No bonds were ever issued to this company, nor contract of any kind made with it by Scotland county, and it ceased to exist as a corporation before the contract for the bonds was made.

Sec. 7, Chap. 34, on Corporations, p. 371 R. S. of Mo. 1855, in force when this charter was granted was in the following words:

"The charter of every corporation that shall hereafter be granted by the Legislature, shall be subject to alteration, suspension and repeal, in the discretion of the Legislature" Sec. 56, page 438 is to the same effect.

Upon these sections this court remarked in Scotland Co. vs. Thomas, 94 U. S. 682, in reference to this charter:

"By general laws of the State, in force when the original charter was granted, the Legislature had reserved the power to alter, suspend and repeal all charters of incorporation, and had specially reserved this power in the general railroad act. It would seem clear therefore that alterations of the charter were admissible."

July 4, 1865, while this company was still in exis-

tence, a new constitution was adopted, Sec. 4 of Art. 8, being in the following words.

"Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes. All general laws, and special acts passed pursuant to this section may be altered, amended or repealed."

No law existed in Missouri authorizing or permitting a railroad corporation of the State to consolidate with one of another state until March 2, 1869, (Laws of 1869, P. 75). Taking advantage, May 3, 1870, of this act, the Alexandria and Bloomfield, then called the Alexandria and Nebraska City Railroad Company, consolidated with an Iowa company called the Iowa Southern Railway Company and thus formed the corporation which is named as payee in the bonds. The bonds bear date September 1, 1870.

The consolidation act is as follows:

"SECTION 1. That any railroad company organized under the general or special laws of this state, whose track shnll at the line of the state connect with the track of the railroad of any company organized under the general or special laws of any adjoining state, is hereby authorized to make and enter into any agreement with such connecting company, for the consolidation of the stock

of the respective companies whose tracks shall be so connected, making one company of the two, whose stock shall be so consolidated, upon such terms and conditions and stipulations, as may be mutually agreed between them, in accordance with the laws of the adjoining state in which the road is located, with which connection is thus formed.

SEC. 2. Such consolidation shall not be made, however, unless the terms and provisions thereof shall be approved by a majority of the stock, or the holders of a majority of the capital stock in each of said companies whose stock shall be consolidated, at some meeting called expressly for that purpose, or by the approval of the same by the holders of the same amount of stock in each of said companies, in writing, and signed by them.

SEC. 3. When the terms of said consolidation shall have been agreed upon, as above stated, and approved in one or the other of the modes above set forth, it shall be competent for the boards of directors in each of said connecting companies to carry the same into effect, and adopt by a resolution a new corporate name for the company, which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company, as may have been agreed by the terms of the

consolidation; and a copy of the said consolidation agreement and the resolutions of consolidations, and the name adopted for the new company, shall be filed with the secretary of state, and shall be conclusive evidence of such consolidation, and of the corporate name of the consolidated company; *provided*, that whenever at any place on the line of this state, two or more railroads in this state are competing for the business, to or from any railroad in an adjoining state, and a consolidation of either of such competing roads, with the road in an adjoining state, would diminish or prevent such competition, then, and in such case, consolidation shall not be permitted under this act, and in case any railroad in this state shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars, without breaking bulk upon said consolidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms; and the same may be enforced by appropriate legislation; *and provided further*, that the state reserves to itself the right to guarantee to any road that may hereafter be built to any such point, the right to make a fair contract for the transportation of freight and passengers, with such consolidated road, and in case any such railroad company shall consolidate, or attempt to

consolidate with a connecting road, contrary to the provisions of this act, any person or party aggrieved, may bring action against them, in the circuit court of any county through which such road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction or otherwise.

SEC. 4. Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this state, which may be thus consolidated with one in the adjacent state, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the state, and be entitled to the same franchises and privileges under the laws of this state, as if the consolidation had not taken place.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 2, 1869."—Laws of Mo. page 75.

1st. Either the bonds were issued by authority of a special charter, or

2nd. By authority of the power granted by the general railroad law, or

3d. By authority of the grant of powers given by law to county courts in general.

If issued by virtue of special charter authority, the tax could be so much as the charter authorized.

If by power of the general railroad law, then such tax as it authorized, and

If by authority of the ordinary grant of power given to all county courts, then so much as the revenue law authorized, and no more.

PROPOSITIONS.

I believe the following propositions to be law, applicable to this case:

1st. A corporation in Missouri is a creature created by the State. All its grants are from the State.

2nd. It can have no successor.

3d. It cannot transmit its grants to another.

4th. When it ceases to exist from any cause, all its grants are surrendered to the State.

5th. The consolidation of two or more corporations operates to destroy the old, and they cease to exist, their grants are not transmitted to the new company, but are surendered to the State.

6th. The new company thus formed receives from the state a new grant of powers, and becomes a corporation, absolutely independent of the original corporations or their grants.

7th. If the constitution limits the power of the

State to create corporations its grants must be within the limits.

8th. After July 4, 1865, the State could not create a corporation by a special act, but could do so by general laws.

ARGUMENT AND BRIEF.

1st. The payee named in the bonds was a corporation organized by general law, and had no special charter.

In Atlantic and Gulf R R. Co. vs. Georgia, 98 U. S. 359, this court decided that under an act of consolidation like this that the consolidated company is a new corporation, and that its powers and privileges are derived, not from the charters of the constituent companies, but from the legislative act of consolidation. This court said:

"Their powers, their franchises and their privileges were therefore gone, no longer capable of exercise or enjoyment. Gone where? Into the new organization, the consolidated company, which exists alone by virtue of the legislative grant, and which has all its powers, facilties and privileges by virtue of the consolidation act. What then was left of the old companies? Apparently nothing.

They must have passed out of existence, and the new company must have succeeded to their rights and duties. But the new company comes into existence un-

der a fresh grant. Not only its being, but its powers, its franchises and immunities, are grants of the Legislature which gave it existence. If then the old Atlantic and Gulf Railroad Company and the Savannah, Albany and Gulf Railroad Company went out of existence when their stocks were consolidated under the act of the Legislature of 1863, their powers, their rights, their franchises, privileges and immunities ceased with them, and they have no existence except by virtue of the grant of corporate powers and privileges made by the Consolidation Act of 1863. The Act created a new corporation, and endowed it with the several immunities, franchises and privileges which had previously been granted to the two companies, but which they could no longer enjoy. It necessarily follows that the new company held the rights granted to it under and subject to the law as it was when the new charter was granted."

The court then quotes some sections of the statute in force when the charter was granted, and which are similar to those above quoted from our statute of 1855 and the constitution of 1865, and then say:

"Consequently the franchise was held subject to a power in the State to withdraw it, and subject to be changed, modified or destroyed at the will of the grantor or creator. These provisions of the code became, in

substance, a part of the charter."

In Scotland County vs. Thomas, 94 U. S. 682, in reference to this very charter, this court declared that the State had reserved the right to alter, suspend or repeal it. The doctrine that a company thus formed is a new company and takes its powers and privileges from the law then in force and not from the charters of the constituent companies, seems to be announced in,

Maine Central R. R. Co. vs. Maine, 96 U. S. 499.

Memphis & L. R. R. R. Co. vs. Berry, 112 U. S. 609.

St. Louis, Iron Mt. & S. R. R. Co. vs. Berry, 113 U. S. 465.

McMahan vs Morrison, 16 Ind. 172.

Lauman vs R. R. Co. 30 Pa. St. 42.

Clearwater vs. Meredeth, 1 Wal. 40.

State ex rel Wine, Col. vs. Keokuk & Western R. R. Co. 99 Mo. 30.

In the latter case the Supreme Court of Missouri follows the line of argument laid down by this court, and on page 41 announce this conclusion:

"The conclusion is irresistible, that the Missouri, Iowa and Nebraska Railroad Company was a new corporation created under and by force of the act of 1869." Now steps in the constitution of 1865, in force five years

when the consolidation took place, and declares, (Sec. 4, Art. 8): "Corporations may be formed under general laws, but shall not be created by special acts."

The payee named in the bonds then is a "new company," created by "general laws" and not by "special acts." The new company does not take its powers and privileges from the charters of the old companies, for they are surrendered to the State.

In Memphis and Little Rock Railroad Company vs. Berry, 112 U. S. 619, this court in commenting upon mortgage, sale, or other transfer *inter partes* of the franchise to be a corporation, quotes Supreme Court of Ohio as follows: "The real transaction, in all such cases of transfer, sale or conveyance, in legal effect, is nothing more or less and nothing other than a surrender or abandonment of the old charter by the corporators, and a grant *de nevo* of a similar charter to the so called transferees or purchasers. To look upon it in any other light, and to regard the transaction as a literal transfer or sale of the charter, is to be deceived, we think, by a mere figure or form of speech. The vital part of the transaction, and that without which it would be a nullity, is the law under which the transfer is made. The statute authorizing the transfer and declaring its effect is the grant of a new charter, couched in a few words, and to take

effect upon condition of the surrender or abandonment of the old charter; and the deed of transfer is to be regarded as mere evidence of the surrender or abandonment." This court then goes on to say: "It is, of course the law in force at the time the transaction is consummated and made effectual that must be looked to as determining its validity and effect. This is the principle on which this court proceeded in deciding the case of *Railroad Co.* vs. *Georgia* 98 U. S. 359. The franchise to be a corporation remained in and was exercised by the old corporation, notwithstanding the mortgage of its charter, until the new corporation was formed and organized; it was then surrendered to the State, and by a new grant then made passed to the corporators of the new corporation, and was held and exercised by them under the constitutional restrictions then existing." This language was affirmed in St. Louis, Iron Mt. & S. Ry. Co. vs. Berry, 113 U. S. 465.

In Shields vs. Ohio, 95 U. S. 319, this court uses these words:

"The new organization took the powers and faculties designated in advance in the Acts authorizing the consolidation; no more and no less. It did not acquire any thing by mere transmission. It took everything by creation and grant." * * * * *

"When the consolidation was completed, the old corporations were destroyed; a new one was created, and its powers were 'granted' to it, in all respects, in the view of the law, as if the old companies had never existed, and neither of them had ever enjoyed the franchises so conferred. The same legislative will created and endowed the new corporation. It did one as much as the other. In this respect there is no ground for any distinction." * *

On another branch of the argument the court says:

"It is argued that the franchise here in question was property held by a vested right, and that its sanctity as such, could not be thus invaded. The answer is *consensus facit jus*. It was according to the agreement of the parties. The company took the franchise, subject expressly to the power of alteration or repeal by the General Assembly. There is, therefore, no ground for just complaint against the State." The further principle must be remembered that while the consolidation was a voluntary act and operated as an acceptance of the disabilities imposed by law, that the contract for the bonds was also entered into voluntarily, and necessarily subject to all the disabilities imposed by the law on the power of the county court to tax, they having acted without vote of the people.

By the foregoing decisions it may be seen that on

the 3d of May, 1870, the Alexandria & Bloomfield Company ceased to exist, and its charter was, by its own voluntary act, surrendered to the State. The bonds were issued on the 1st day of the following September, and declare on their face, (page 10, record), that it is by authority of that expired and surrendered charter.

They further declare that they are issued to a consolidated company, naming it, and making it the payee. These recitals are sufficient to put the purchaser on inquiry as to the power of the county court to tax.

Now the right to receive subscriptions which the consolidated company enjoyed was not that charter grant to the old company, but only so much of it as the laws then allowed. If the laws had by this time modified that part of the charter, the new company took it subject to the modifications. If the laws imposed limitations on the power to tax, which by the charter had been absolute, the voluntary consolidation operated to surrender the charter right, and to accept the law as it then stood. There was no force, no compulsion. No impairment of contract or right. It was the voluntary act of the parties themselves, and their own acceptance of the law. The Legislature was powerless, as we have seen by the constitution, to create a corporation by special act, and this was a new company, and it could not enjoy any privileges

which the legislature was powerless to grant. Whereupon I conclude, that although the bonds recite on their face that they were issued by virtue of the charter, yet that as a matter of law it is not true, it being a fact impossible in law for an act to be authorized by a law which was not in force. The charter being dead could not authorize the issue of bonds. They were issued by other authority, and the fact of the Missouri, Iowa and Nebraska Company being named as payee in the bonds and at the same time as the product of the consolidation, that a purchaser would necessarily be put on inquiry as to the authority for the issue of the bonds and in that way arrive at the law authorizing the levy of taxes to pay them.

Sec. 13., Art. 11, of the Constitution of Missouri of 1865, and in force when the consolidation was effected was in these words: "The general assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to any company, association or corporation, unless two thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein shall assent thereto."

It is apparent then that this new company could not have had special legislative authority for the contract, and that the authority must be founed in the general laws then existing which authorized county courts to levy taxes

to provide for the expenses of the county.

The clause of the constitution last quoted does not forbid the county court to make the county a stockholder, and does not forbid them to loan its credit. If it may therefore be assumed that the county court had the power, without a vote of the people; yet it was coupled with whatever limitations the law imposed on the power to tax. This power was not derived from the charter when the bonds were issued, for it had been surrendered to the State.

It therefore follows, that while the bonds are the binding and valid obligations of the county as declared by the court, yet the parties contracted, and the several holders purchased with full notice of whatever limitations the statute at that time imposed on the power of the county court to tax.

It is manifest that this act contemplated the formation of a new company in accordance with the constitutional requirement, and it is also plain that the old company went out of existence and surrendered its charter to the State, and that the new company became organized under the general laws then in force.

Now this new company received the bonds, and we are not to look to a defunct charter, for the law of taxation to pay them, but to the grant of power under which

the company was formed, and that was the railroad consolidation act of Missouri.

The bonds however were not issued by vote of the people. That was done by the county court of their own motion. The statute in force at that time was Section 17, of Chapter 63, General Statutes of Mo. 1865, page 338 and Section 17, Art. 2, Chap. 37. page 305, Wagner's Statutes, and is in these words:

"It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town, to take stock for such county, city or town in, or loan the credit thereof to any railroad company duly organized under this or any other law of the State; *provided*, that two thirds of the qualified voters of such county city or town, at a regular or special election to be held therein, shall assent to such subscription."

It is evident, therefore, that this section was not the one conferring the power, or if it was the court did not follow it. Had the vote been taken, the bonds issued under and by authority of that act, then the next succeeding section provides ample authority to levy special taxes sufficient to meet the installments of the debt as they fall due, as also Section 21 being the law when the contract for the bonds was made, covered cases of previous subscriptions, a curative statute, so to speak, and provided

for sufficient levy of taxes, but these are not our case. These are all the sections of the railroad law for making county subscriptions and levying taxes, and as these bonds are not issued in pursuance thereof, I turn to the Revenue law then in force for authority to levy taxes. Here we find, Chap. 11. Sec 7. page 96 Gen. Stat. 1865, these words: "The annual tax levied upon all subjects of taxation, exclusive of taxes for the Union military fund, shall be at the following rates: First, on all male persons over twenty-one and under fifty years of age, one dollar; second, on lands and other property, real and personal, made taxable by law, forty cents on the hundred dollars of the assessed value thereof." Then on page 121 same volume, Sec. 76 of Chap. 13, these words:

"The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for state purposes; but the county tax shall, in no case, exceed the state tax, on the same subject of taxation, more than one hundred per centum for the same time; but the connty court of St. Louis county is empowered to impose such additional taxes, to pay fines and for other purposes, as may be prescribed by law."

Upon these two sections this court has placed the

following construction:

"The power of counties in the State to tax for general purposes was limited by law to one half of one per cent. on the taxable value of the property in the county."

United States *ex rel* Huidekoper vs. Macon County Court, 99 U. S. 582. In Ralls Co. vs. Douglass, 105 U. S. 733 the same construction is announced back as far as 1857, and in the Macon county case, the court adds that the rate has never been increased since 1865.

I therefore conclude, that while the bonds recite on their face that they are issued by virtue of a charter, yet that statement is not a statement of fact, but an erroneous conclusion of law. That it with other recitals should incite to inquiry, whereupon it would be determined that the bonds were not, in fact and law, issued by virtue of that charter, for it was not then in existence. That we need not, therefore, look to that charter for power to tax. It was not in fact a part of the contract.

I conclude again that these bonds were not issued by authority of section seventeen of the general railroad law of Missouri, because that section provided for a vote of the people and none was had, and as the taxing power there granted is dependent upon being authorized by vote of the people before it can be exercised, that it does not confer the power, because it was not complied with.

Whereupon I finally conclude that the bonds were issued under and by virtue of that general grant of powers which all county courts enjoyed in reference to providing for the welfare of their counties, and that it was coupled with the limitation of the revenue laws which forbid county courts to levy more than fifty cents for the general expenses of the counties. That this power was all the State could then grant to the new company, unless the people of the county voted the authority, and that a special charter was absolutely out of the question.

As the court below in the opinion rendered (page 22, printed record) cites *Aull* vs, *Shortridge*, 56 Mo. 130, section 21, page 306, Wagner's statutes; also Sec. 9, page 441, and Sec. 165, page 1193, same statutes, as authority for his conclusions, I therefore quote the sections cited, and that part of the decision to which the learned judge no doubt alludes.

In Aull vs. Shortridge, 56 Mo., at page 130, the court refers to Sec. 34, of the 1855 statutes, which is section 21 of the Wagner statutes, and says: "And no doubt this provision would have entered into and formed a part of these bonds, and might have so entered into the obligations of the contract as to prevent a subsequent repeal by the Legislature, if there had been no restriction contained in the special act authorizing this subscription."

Now the section alluded to was in the R. S. 1855, and continued to 1874, is in the general railroad law of the State of 1872 as section 21, and is in these words:

"Any county court, city or town which has heretofore subscribed to the capital stock of any railroad in this State, shall be entitled to the privileges and subject to the liabilities of other stockholders in such company, and the county court or city or town council shall have all the rights and powers to provide funds to pay such subscriptions as are granted to county courts and cities by this chapter, and may levy a special tax to pay the interest on their bonds, or to provide a sinking fund to pay the principal."

That clause it will be seen was directed only to give power where bonds had been issued before the section became law. It certainly cannot be construed to give power to issue the bonds and then tax. The case of Aull vs. Shortridge was on the Macon county Mo., issue of Missouri and Mississippi bonds, and I quote now from this court on the power which the general railroad law gives on the same bonds. It is from United States *ex rel* Huidekoper vs. County Court of Macon County, 99 U. S. 582.

"Our attention has been directed to the General Railroad Law in force when the Missouri and Mississippi

Railroad Company was incorporated and when the bonds in question were issued, and it is insisted that ample power is to be found there for the levy of the required tax. The power of taxation there granted is, as we think, clearly confined to subscriptions authorized by that act, which require the assent of two thirds of the qualified voters of the county. Under such circumstances, it seems to have been considered proper to allow substantially unlimited power of taxation to pay a debt which the voters had directly authorized. In this case no such assent by the voters was required, and the tax payers were protected against the improvident action of the official authorities by a limit upon the amount they should be required to pay in any one year."

The section 9, of page 441, Wagner's Statutes, referred to by the court below, is in these words:

"The said court shall, moreover, have control and management of the property, real and personal, belonging to the county; and shall have full power and authority to purchase, or receive by donation, any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

I must confess that I can see here no power to subscribe to the capital stock of a railroad company, to issue bonds, to create a debt, nor to levy a tax, but rather see the means of procuring a court house site, or a poor farm.

The next section, 165, page 1193, Wagner's Statutes is in these words:

"The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for State purposes, except what is herein excepted by this act, but the county tax shall in no case exceed one half of one per cent. on all taxable property, and on all licenses made taxable by law the county tax shall not exceed the State revenue tax more than one hundred per centum for the same time, but the county court of St. Louis County is empowered to impose such additional taxes to pay fines and for other purposes, as may be prescribed by law. The State interest tax not to be construed to be a state revenue tax."

"This section, instead of giving unlimited power absolutely confines the power to one half of one per cent.

It therefore seems that the court below has unquestionably erred in declaring that the county court on the

1st day of September, 1870, had "ample authority to levy a tax to any amount," to pay the bonds. In the Huidekoper Macon county case, *supra*, this court declared:

1st. "Every purchaser of a muncipal bond is chargeable with notice of the statute under which the bond was issued. If the municipality has no power, either by express grant or by implication, to raise money by taxation to pay the bond, the holder cannot require it."

2nd. "This court has no power by mandamus to compel a municipal corporation to levy a tax which the law does not authorize."

3d. "A judgment does not give the creditor any right to a levy of taxes which he did not have before the judgment,"

One further subject is to be considered:

The subscription in this case was not made under and by virtue of the Act of March 23, 1868, (Laws of Mo. page 92.)

That act required a vote of the people, but no vote was had. There was an act of March 10, 1871, (Laws of 1871, page 55) which was amendatory of the 1868 act, and this court declares that it was repealed March 24, 1885, (Laws of Mo., page 93) in County Court Cape Girardeau Co. Mo. *et al.* vs. United States *ex rel.* Hill, 6

Supreme Court Reporter 951.

Now in the case Seibert, collector, vs. United States *ex rel.* Hill, 122 U. S. 284, this court clearly indicates that the law in force for the collection of taxes to pay a judgment are the laws in force at the date the judgment is rendered. This judgment in the case at bar was rendered Oct. 14, 1885, and the repeal of the 1871 act was March 24, 1885. The act of 1871 was no part of the contract in this case, being passed after the bonds were issued, and it was repealed before this judgment was rendered.

The language of this court, near the close of the opinion is in these words:

"That the laws of Missouri for the collection of the tax necessary to pay his judgment, in force at the time when it is was rendered, continue to be and are still in force for that purpose. They are the laws of the State which are applicable to his case."

The bonds involved in that suit were issued under the 1868 Act. As this court held in the Seibert case, *supra*, that the Act of 1871 was not repugnent to the Cotty Law of 1879, that the 1879 law did not repeal the 1871 act, so it follows, that in March 1885, when the 1871 act was repealed, that the Cotty Law of 1879 was left in force as the means of collecting taxes in this parti-

cular case.

I therefore conclude that the defense set up in the return, and admitted by the demurrer to be true is a complete defense, and that the judgment of Circuit Court should be reversed, and the cause dismissed.

JOHN C. MOORE,
Attorney for Respondents.

SUPREME COURT U. S.
FILED.
Mar 31 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE COUNTY COURT OF SCOTLAND COUNTY AND THE JUDGES THEREOF,
PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES EX REL, EXECUTORS OF WILLIAM HILL,
DEFENDANT IN ERROR.

No. 298.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

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AND JNO. H. OVERALL,
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No. 298.

STATEMENT.

On Septemper 1st, 1870, Scotland county issued $200,000,00 in bonds to the Missouri, Iowa & Nebraska Railway Company, a corporation formed by the consolidation of the Alexandria & Nebraska Railway Company (formerly the Alexandria & Bloomfield Railroad Company), with the Iowa Southern Railway Company, under act of March 2d, 1869 (Laws Mo. 1869, page 75), the fourth section of which is as follows: —

"Any such consolidated company shall be subject to all the liabilities and bound by all the obligations of the company within this state which may be thus consolidated with one in the adjacent state, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the state, and be entitled to the same franchises and privileges under the laws of this state, as if the consolidation had not taken place."

The Alexandria & Bloomfield Railroad Company was organized under an act of legislature of the State of Missouri, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857 (Laws Mo., 1856–7, page 94).

By the 10th section of the last named act, it is provided as follows: —

"Said company shall in all things be subject to the same restrictions and entitled to all the privileges, rights and immunities which were granted to the North Missouri Railroad Company by an act entitled 'an act to incorporate the North Railroad Missouri Company, approved March 3d, 1851,' so far as the same are applicable to the company hereby created, as fully and completely as if the same were herein re-enacted."

By section 14 of the act incorporating the North Missouri Railroad Company, it is provided as follows (Laws Mo. 1850-1, page 483):—

"It shall be lawful for the county court of any county in which any part of the route of said railroad may be, to subscribe to the capital stock of said company and it may invest its funds in the stock of said company, and issue bonds of such county to raise funds to pay the stock thus subscribed and to take proper steps to protect the interest and credit of the county."

The bonds were issued to the consolidated company un-

der the provision of the said act incorporating the said Alexandria & Bloomfield Railroad Co.

Relator began suit in the United States Circuit Court of Missouri on coupons detached from a large number of said bonds and obtained judgment therefor in the sum of $46,-944. This judgment was affirmed by this court. (See case of county of Scotland *v.* William Hill, defendant in error, 132 U. S., 107.)

The relator proceeded by mandamus to enforce this judgment and the court below, by its writ, ordered the county court of Scotland county to levy a tax sufficient to pay the same, from which order or peremptory writ of mandamus, plaintiff brings this case here by writ of error.

The relator having departed this life, the case was revived in the name of his executors.

The only question raised here, is whether the county court of Scotland county can be compelled to levy a tax sufficient to pay this judgment.

BRIEF.

I.

That these bonds were issued to the Missouri, Iowa & Nebraska Railway Company by virtue of the authority in the charter of the Alexandria & Bloomfield Railroad Company, passed as aforesaid in 1857, has been conclusively determined by the judgment in this case, and is not now open for consideration.

County Court of Ralls County and the Judges thereof, *v.* Joseph M. Douglass, 105 U. S., 733;

County Court of Cape Girardeau County *et al. v.* United States ex rel John T. Hill, 118 U. S., page 68.

County of Scotland *v.* Thomas, 4 Otto, 682.

II.

That ample authority was given the county court of Scotland county to levy a tax sufficient to pay this judgment, by the act incorporating the Alexandria & Bloomfield Railroad Company can admit of no doubt, under the decisions of this court and of the Supreme Court of Missouri.

United States ex rel Ranger *v.* New Orleans, 98 U. S. 381;

Savings & Loan Asso. *v.* City of Topeka, 20 Wallace, 655;

U. S. ex rel Douglass *v.* Lincoln County, 5 Dillon, 184;

Seibert, Collector *v.* U. S. ex rel Lewis, 122 U. S. 284;

State ex rel *v.* Shortridge, 56 Mo. 130.

Also cases cited by Judge Thayer in delivering the opinion of the court below in this case. (Page 22 printed record herein. 32 Fed. Rep. 714).

III.

The point made by counsel for plaintiff in error, that the power to levy a tax in this case, must be determined by the law in force at the time judgment was rendered, is not well taken. The remark of Mr. Justice Matthews in delivering the opinion in the Seibert case, 122 U. S., *supra*, that the laws for the collection of a tax to pay a judgment are those in force at the time it was rendered, must be taken with reference to the facts of that case, and not as a general proposition. The rule as stated in the first part of the opinion to be is the remedy subsisting in the state, at the time the contract was entered into.

Van Hoffman *v.* City of Quincy, 4 Wallace, 535;
Riggs *v.* Johnson, 6 Wallace, 184;
County Court of Ralls County *v.* United States ex rel. Joseph M. Douglas, 105 U. S. 733.

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Attorneys for Defendant in Error.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 614. 309

WILLIAM N. BORAH, L. W. TROTTER, A. F. NESBIT, TOLIVER SIMPSON, J. J. DAVIS, W. B. HERSLINGER, AND H. TOMPKINS, APPELLANTS,

vs.

JOSEPH E. WILSON, COUNTY CLERK, AND O. P. PATTERSON, COUNTY COLLECTOR AND TREASURER OF WAYNE COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 13, 1887.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district and, in the absence of the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, on Tuesday, the fifth day of October, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the one hundred and eleventh year.

J. A. JONES, *Clerk.*

WILLIAM N. BORAH, SAMUEL TROTTER, A. F. NESBIT, Toliver Simpson, J. J. Davis, and W. B. Heidenger *v.* JOE E. WILSON, County Clerk, and O. P. PATTERSON, County Collector and Treasurer of Wayne County; Charles P. Swigert, Auditor State of Illinois; J. Gross, Treasurer State of Illinois; John Ware, Augustus T. Post, Society for Savings, Andrew Potter, John A. Waterman, William B. Skinner, William Beam, John A. Peters, and O. P. Page, Treasurer of Biddeford Savings Bank.	In Chancery.

2 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and eighty-six, came John Ware, one of the defendants herein, by Messrs. Bailey and Sedgwick, his solicitors, and filed in the clerk's office of said court a certified record of papers filed and proceedings thereon had in the circuit court of Wayne county, Illinois; which said certified record is in the words and figures following, to wit:

Certified Record from Wayne Co.

Be it remembered that on the eleventh day of January, A. D. 1886, the following bill was filed in the clerk's office of the circuit court of Wayne county, Illinois, to wit:

Bill.

WILLIAM N. BORAH, SAMUEL TROTTER, A. F. Nesbit, Toliver Simpson, J. J. Davis, and W. B. Heidenger
v.
JOE E. WILSON, County Clerk; O. P. PATTERSON, County Collector and Treasurer; Chas. P. Swigert, Auditor State of Illinois; J. Gross, Treasurer State of Illinois.

Bill for Injunction and to Cancel Bonds Issued by Wayne Co.

To the hon. judge of circuit court of the second judicial district of Illinois, in chancery sitting, in and for the county of Wayne:

Your orators, Wm. N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, W. B. Heidinger, and H. Tompkins, would respectfully represent unto your honor that they are owners of real estate and tax-payers in the county of Wayne and State of Illinois, and that they bring this suit for themselves and in behalf of all other tax-payers, and represent that the county of Wayne, under provisions of the constitution of the State of Illinois of 1848, adopted township organization as the mode of government for the said county, and entered fully upon the same at the June term of 1860; that the provisions of the constitution is [are] as follows: Article 7, sec. 6, as follows: The General Assembly shall provide by a general law for a township organization, under which any county may organize whenever a majority of the county at a general election shall so determine; and whenever any county shall adopt a township organization so much of this constitution as provide- for the management of the fiscal concerns of the said county by the county court may be dispenced with, and the offices [affairs] of the county may be transacted in such manner as the General Assembly shall provide.

County of Wayne adopted township organization June, 1860, with fifteen towns. Art. 7, sec. 6.

Township organization by general law.

That the Legislature of the State of Illinois did enact a general law to adopt township organization Feb'y 17, 1851, provided as follows:

General law for township organization.

"SEC. 1. That at any general election that may be holden in the several counties in this State the qualified voters in any county may vote for or against township organization in such county."

SECTION 5. Provided that the county board at its next session appoint three commissioners, resi-

dents of the county, to divide the county into towns.

SECTION 6. The commissioners so appointed shall proceed to divide such county into towns, making them conform to the townships according to Government surveys. Fractional township- may be attached to adjoining towns where the number of the inhabitants or the amount thereof shall not be sufficient for a seperate town. Where a township shall have too few inhabitants for a seperate organization, then such township may be added to some adjoining town or divided between two or more towns for the time being, and where a creek or river so divides a township that it is inconvenient for transacting town business, then such creek or river may be made the town boundary and the fractional township.

SEC. 7. Towns shall be named in accordance with the express wish of the inhabitants of the town, and if there shall not be a degree of unanimity as to the name the commissioners may designate the name:

Provided, That the county board shall have power to change the name of any town in their respective counties upon a petition of a majority of the voters of said town. And provided further, That no two towns in the State or county shall have the same name.

Wayne county organized under township organization.

That the county court did appoint commissioners, who proceeded to divide the county into fifteen towns, as shown by the following report:

March Term, 1860.

Report of Commissioners.

To the honorable county court of Wayne county, Ill.:

The undersigned, who was [were] appointed at the last Dec. term of said court, commissioned to lay off said county of Wayne into towns preparatory to organizing said county under the township organization law, would respectfully report that they have laid off said county into towns, with names as follows, viz:

Names.

Arington, Barnhill, Bedford, Big Mound, Brush Creek, Elm River, Four Mile, Hickory Hill, Indian Prairie, Jasper, Lamard, Leech, Massilon, Mount Erie, and Zif, with boundary as shown by "Ex. A," hereto attached, which is made a part of this bill; that sec. 21 provides a manner how the said government might be discontinued

and return had to county board, consisting of a county judge and two associates, as follows:

Provisions how to abolish township organization.

Upon the petition of at least one-fifth of the legal voters of any county having adopted township organization, to be ascertained by the vote cast at the last preceeding Presidential election, the county board shall cause to be submitted to the voters of such county at the next general election the question of continuance of township organization, to be voted on by ballot, written or printed, or partly written and partly printed, for the continuance of township organization or against the continuance of township organization; notice to be given and the votes to
7 be canvassed and returns made in like manner as in this act provided in reference to a vote on the adoption of township organization.

County of Wayne never changed her form of government.

Your orators further represent that the management of the fiscal concerns of the county, as adopted, has never been changed by any vote of the voters of Wayne county or by provision of any general law regulating township organization.

That the division of the county into fifteen towns, as made, reported, and adopted by the county court on the 1st day of March, 1860, has remained the same to this date.

Incorporation of the I. S. E. R. R. C., with its provisions.

Your orators further represent that the Legislature of the State of Illinois passed an act to incorporate the Illinois Southeastern R. R. Co., which was approved by the Governor on the 25th day of February, 1867, and by which act, among other things, it provided that the said company shall have power to unite its road with any other road now constructed or which may hereafter be constructed. * * *

That the county court or board of supervisors, where such county has adopted township organization, of any county into or through which their road or its branches may pass is hereby authorized and fully empowered to donate to said company, as a bonus or
8 inducement toward building of said railroad or its branches, any sum not exceeding one hundred thousand dollars, and may order the clerk of the county court or board of supervisors of said county to issue bonds of the county to the amount donated, and such clerk of the court or board of supervisors, as the case may be, of such county shall countersign and deliver said bonds so issued to the president — directors of said R. R. Co., which said bonds may bear any rate of interest not to exceed ten per cent. per annum, payable at maturity of the * * * bonds, as hereinafter expressed, and yearly thereafter: Provided, That no donation of the

county court or board of supervisors of any such county shall be of a greater sum than fifty thousand dollars until after the question of such larger donation shall have been submitted to the legal voters of such county at an election to be called, conducted, returns made, canvassed, and published in the usual manner of calling, conducting, making returns, canvassing, and publishing special county elections, at which election each voter shall vote a ticket upon which is written or printed the words, viz., "For donation" or "Against donation;" and if a majority of the votes cast at such an election be in favor of donation it shall be the — county court or board of supervisors of such county so voting to donate some amount, not less than fifty thousand dollars nor more than one hundred thousand dollars, to said company, and to order the issuing of the bonds of the county, as hereinbefore provided, for the amount so donated, which bonds shall be made payable to the directors of said company and may be in any denomination not less than one hundred nor more than one thousand dollars each, at the discretion of the said county court so issuing the same:

Provided, That the bonds of any county so donated and issued shall not mature nor become due or payable nor any of the interest accruing thereon or upon any part thereof until the said company shall have completed or caused to be completed so much of the line of said road or its branches as may be within the county so donating, or when some certified section or part of the said road shall have been finished as may be agreed upon between this company and the county court or board of supervisors of the county making the donation, and each of said bonds shall declare upon its face the conditions upon which it is to become due. It was further provided by said act that the said railroad should be divided into sections of not less than five miles each, and that it should organize under the provisions of section four of said act within one year from and after its passage, and should commence the construction of said railroad in good faith within three years, and should complete the same within twenty years; which act was approved and went into force Feb. 25th, 1867.

Your orators would further represent that the said railroad company did duly organize under the said act and became a body corporate, but without any State subscription being paid or assessed; that five persons claiming to be the board of supervisors of said county of Wayne, claiming to represent the fifteen towns of said county, and claiming to act under the act of the Legislature of the State of Illinois approved by the Governor of the State February 28th, 1867, entitled An act to change the time of electing certain officers in a county therein named as follows:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the board of supervisors of Wayne county shall consist of five persons, to be elected in the following manner, to wit: The townships of Four Mile, Hickory Hill, and Arington shall constitute the first electoral district of said county, and shall be entitled to one member of said board. The townships of Big Mound, Lamard,

Jasper, and Barnhill shall constitute the second electoral district of said county and be entitled to two members of said court [board]. The townships of Leech, Massilon, Mt. Erie, and Elm River shall constitute the third electoral district in said county and be entitled to one member of said board. The remainder of said Wayne county shall constitute the fourth electoral —, and shall be entitled to one member of said board.

SECTION 2. There shall be elected on the first Tuesday in April, one thousand eight hundred and sixty-seven, and every four years thereafter, in each of said electoral districts, one member of the board of supervisors of said Wayne county, who shall each hold their office for the term of four years, or until their successors are elected and qualified, except in the second district of said county, which shall elect two members of said board, as provided in section one of this act, who shall hold their office for the said term of four years, and until their successors are elected and qualified.

SECTION 3. Said board, so composed, shall, at their first meeting, organize by electing one of their number chairman for the
13 term of four years, who shall be allowed to vote upon all questions as other members of said board; and said board, when organized, shall do and perform all duties enjoined upon the board of supervisors, acting under the general township organization laws of this State, and shall have all the powers and privileges of boards of supervisors acting under such general township organization laws, and any three of said board shall constitute a quorum for the transaction of any business.

SECTION 4. The members of said board shall each receive such compensation *per diem*, as they may fix, not to exceed four dollars per day for each day in which said members shall be engaged in attending said court.

SECTION 7. All duties not herein provided for to be done and performed by virtue of the township organization laws of this State by the supervisors of towns of the different towns shall be done and performed in said county by a justice of the peace in such town, who shall be selected by the town clerk, town assessor, and town collector for that purpose each year, as soon as practicable after the election of town officers in such towns; and said town clerk, assessor, and collector shall have power to fill the vacancy occasioned by
14 death, resignation, or refusal to serve of said justice of the peace; and such justice of the peace so appointed shall hold such appointment for the term of one year and until his successor shall be appointed and his appointment shall be entered of record by the town clerk, and he shall receive the same compensation provided by law for the supervisor for the like services; but nothing in this act shall be construed to change or in any manner affect the places or manner of voting, as now established by law, in the different precincts in said county.

SECTION 8. This act shall be deemed and taken as a public act and be in force from and after its passage.

And your orators represent that the five persons so elected under the said act did, on the 18th day of January, 1868, while the county

was under township organization with fifteen towns, as had before been divided, submit to the voters of said county the proposition, claiming to be under section seven of said act, for the incorporation of the Illinois Southeastern Railroad Co., as heretofore set out—several propositions, as follows, to be voted upon by the legal voters of the county of Wayne as one proposition:

15 On motion of Levi M. Cisue, it is ordered by the board of supervisors of Wayne county, in the State of Illinois, that a special election shall be held at the usual places of voting in the said county of Wayne, on the 25th day of February, A. D. 1868, upon the following propositions, to wit:

1st. That the county of Wayne subscribe the sum of one hundred thousand dollars to the capital stock of the Illinois Southeastern Railway Company.

2nd. That in payment for such subscription to the capital stock of said company bonds of the said county of Wayne be issued to said railway company, one-half of the amount to be in bonds of the denomination of one hundred dollars each, and the other half of the said bonds to be in the denomination of not less than five hundred dollars nor more than one thousand dollars each, said bonds to bear interest at the rate of seven per cent. per annum from the date of their delivery to the said railway company, payable half-yearly, in the city of New York, on the first days of January and July of each year, said bonds to be so drawn that the county of Wayne may pay them at any time after five years from the date of issuing

16 the same, but the said county of Wayne shall not be compelled to pay the principal of any of said bonds until after the expiration of twenty years from the date of issuing the same, and that the faith of the county of Wayne be pledged for the payment of the interest accruing upon said bonds and for the ultimate payment of the principal.

Provided that the said bonds so issued shall be delivered to the said railroad company and become binding upon the county of Wayne in the following manner, to wit:

The board of supervisors of Wayne county shall deliver one-third of the amount of said one hundred thousand of bonds to the said railway company when ten consecutive miles of the grade, bridging, and tying of said railroad shall be ready for the iron in said county of Wayne, and not sooner; and when another ten miles of said railroad shall be completed as aforesaid in said Wayne county the board of supervisors shall deliver to said railroad company another one-third of the amount of said one hundred thousand dollars of said bonds, and not sooner; and when the whole of the grading,

17 bridging, and tying of said railroad shall be completed and ready for the iron of said railroad in said county of Wayne the board of supervisors of said county shall deliver to the said railroad company the remainder of said one hundred thousand dollars of bonds, and not sooner.

3rd. That a tax upon all taxable property of said Wayne county be annually levied and collected sufficient to pay the interest upon said bonds as it becomes due and payable, according to the condi-

tions of said bonds; that all the aforesaid propositions as to subscriptions be voted upon as one question, and all voters of said Wayne county who favor the adoption of said propositions shall have written or printed on their ballots "For subscription," and all voters of said county of Wayne who oppose the adoption of said proposition shall have written or printed upon their ballots "Against subscription;" and it is further enacted by the board of supervisors of said Wayne county, in the State of Illinois, that at the special election heretofore ordered to be held, at the usual places of voting in the said county, on the 25th day of February, A. D. 1868, the following additional propositions shall be voted upon as an inducement or bonus toward building the Illinois Southeastern railway.

1st. That the county of Wayne, in the State of Illinois, shall donate the sum of one hundred thousand dollars to the Illinois Southeastern Railway Company.

2nd. That in payment of such donation bonds of the said county of Wayne be issued, made payable and delivered to the directors of the said railway company, and such bonds shall be in any sum not less than $100 nor more than $1,000 each, in the discretion of the board of supervisors of said Wayne county, and such bonds to bear interest from the time of the completion of said Illinois Southeastern railway in running order through the said county of Wayne, at the rate of seven per cent. per annum, payable half-yearly, in the city of New York, on the first days of January and July of each year after said interest becomes due, the said bonds to be so drawn as to give the said county of Wayne the right to pay them or any of them at any time after ten years from the date of issuing the same, but reserving to the said county of Wayne the right of not being compelled to pay the principal of said bonds until the expiration of twenty years from the date of issuing the same: Provided, That the bonds so donated, issued, and delivered shall not mature nor become due and payable, nor any of the interest thereon or any part thereof become due or payable, nor shall any liability attach to said county of Wayne to pay said bonds or any part of them nor any of the interest upon them until said railway shall be completed within the whole limits of the line in said Wayne county and the cars running thereon, and each of the bonds so delivered shall declare upon its face the conditions upon which it becomes due and payable.

3rd. That the faith of the said county of Wayne be pledged for the payment of the interest accruing upon said bonds according to the condition of the same, and for the ultimate payment of the principal, and that a tax upon all the taxable property of said county of Wayne sufficient to pay the interest upon said bonds as it accrues be annually levied and collected for the payment of interest.

That all of said propositions for donation to said Illinois Southeastern Railway Company be voted upon as one question, and all the voters of said county of Wayne who favor the adoption of said proposition shall have written or printed upon their ballots "For donation," and all voters of said county of Wayne who oppose the adoption of said proposition shall have written or printed

upon their ballots "Against donation;" which election shall he held in accordance with the laws governing the general elections in this State; which election will be opened at eight o'clock in the morning and will continue open until six o'clock in the afternoon of the same day.

That the line of said railway shall be located and run between the southwest corner of section fifteen, township one south, range seven east, and a point not more than one and one-half miles east of said section fifteen, in said township and range.

It is hereby expressly agreed and understood that if the company or corporation who undertake- to build said road should do enough work upon the same to entitle them to receive any of the said bonds of Wayne county they shall enter into an obligation with the board of supervisors of Wayne county binding themselves in a legal manner to complete the road through the entire length of Wayne county, ready for the cars and rolling stock, within six years from the
21 date of the delivery of the first bonds of said county of Wayne to them, or on condition that if the road is not completed within said time the road-bed, ties, bridges, culverts, rails, and all the materials composing said road within the county of Wayne shall — completely forfeited and become the sole and exclusive property of the said Wayne county, to be used by the said Wayne county thereafter as they, by said board of supervisors, shall think best. By order of the county court.

Your orators would further represent unto your honor that an election was had in pursuance of said order on the 25th day of February, A. D. 1868, and at said election all of said propositions were submitted as one proposition, as above set forth, received a majority of all the votes cast, but not a majority of the legal voters of the county, and was declared by the pretended board of supervisors carried by the majority — votes so cast by the people of said county; that at the December term, 1868, of the same pretended board of supervisors of Wayne county, the said Illinois Southeastern Railway Company accepted formerly [formally] the proposition of said Wayne county to so subscribe $100,000 to the capital stock of said
22 R. R. Co., and also the proposition to donate $100,000 to said company.

Your orators would further represent unto your honor that on the 24th day of February, A. D. 1869, the Legislature of the State of Illinois passed an act entitled "An act to amend an act entitled An act to incorporate the Illinois Southeastern Railroad Company;" which act, among other things, provided that the Illinois Southeastern R. R. Company, in addition to the powers already conferred, shall have such other powers, rights, privileges, and immunities as are herein provided for, and all subscriptions to the capital stock or donations or gifts to said railway company, whether made by individuals, townships, counties, or corporations, shall be and are by this act legalized, and the said company is hereby empowered and authorized to collect and use the same upon the consideration as donated and subscribed. * * *

And the county courts or board of supervisors of said counties,

respectively, may — and issue such bonds, payable to the directors of said company or bearer or otherwise, so as to make them negotiable by delivery, having such time to run and bearing such
23 rate of interest, not exceeding ten per cent. per annum, payable annually or semi-annually, in or out of the State, as may be agreed upon by them and the said railroad company and conformable to the terms upon which donations were or may be, respectively, voted for in said counties; the interest to be payable to bearer according to interest coupons attached to said bonds. Said act further provides that whenever said railroad company shall so demand the county courts or board of supervisors, as the case may be, of said counties, respectively, and the proper authorities of the several townships shall cause the bonds so provided for, with interest coupons attached, to be prepared and executed and placed in the hands of a trustee to be agreed upon by the said county court or board of supervisors, who shall deliver said bonds to said railroad company or its assigns when and as the condition upon which said donations were voted for shall be fulfilled, and the coupons for all interest past due at the time when said company becomes entitled to the said bonds shall be detached and cancelled by said trustee and the interest for the current half year or year so arranged that said counties shall only pay interest on said
24 bonds from the date at which said railroad company was entitled to receive the same. * * *

Whereas in section seven of the act to which this is an amendment it was provided that any bonds in payment of any donation made by counties to said railroad company that each of said bonds should declare upon its face the conditions upon which it should become due and where the election notice heretofore issued by the proper authorities of any such counties making donations to said railroad company, as well as the act to which this is an amendment, contains certains conditions required to be performed by said railroad company before the bonds of such counties should become due and payable, and which conditions were by such notice, as well as by the act to which this is an amendment, required to be inserted in the face of such bonds to be issued by such counties:

Therefore it is further enacted that, upon a full and complete performance by said company of all the considerations upon which said bonds were to become binding obligations of the counties issuing the same, it shall be the duty of the county court or the
25 board of supervisors, where such county is under township organization, of the respective counties making such donations to enter an order upon their records, at a regular or special term of their court, directing the clerk of said court to certify, over his official seal, upon the back of each of said bonds so issued, in language as follows, viz: "All the conditions upon which this bond was to become a binding obligation of the county of Wayne have been complied with." That the holders of twenty thousand dollars or upwards of the bonds of any county or city issued in pursuance of this act or the act to which this is an amendment may at any time file the same with the auditor of public accounts for registra-

tion and for collection and payment of interest and principal, and all of the provisions of "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13th, 1865, so far as the same relates to registration, collection, and payment of interest according to the tenor of said bonds, shall be in force and be applied for the benefit of all such bonds so registered; and whenever the proper county or city authorities shall provide for payment
26 of principal of said bonds the amount annually to be raised for that purpose shall be certified by the proper authorities of such county or city to the auditor of public accounts, and the provisions of said act shall apply to the collection and payment of the principal of said bonds as so provided by said county or city authorities. Nothing in this section shall be construed to change the rate of interest or payment of principal of said bonds as provided on their face, or in anywise to impair the rights of the holders of said bonds to collect either interest or principal in case of any default in payment of the same; which act was passed by the Legislature of the State of Illinois, was approved by the Governor thereof, and became a law on the 24th day of February, A. D. 1869.

Your orators would further represent that at the June term, A. D. 1869, of the five pretended supervisors of the fifteen town- of Wayne county, styling itself the board of supervisors of Wayne county, the record showing present Daniel Wingate, chairman; Oli-
27 ver Holmes, clerk; L. D. Bennett, sheriff; Coplin McKelney, Miles H. Harris, J. B. Borah, L. M. Cisue, members of the board of supervisors.

Attest: OLIVER HOLMES, *Clerk.*

It was ordered that C. C. Boggs be appointed an agent to procure bonds for the use of Wayne county in making subscription and donations to said Illinois Southeastern Railway Company in the following form for the donation bonds, to wit:

Know all men by these presents that the County of Wayne and State of Illinois acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company or bearer in the sum of $1,000, which said sum the County of Wayne promises to pay at the —— Bank, in the city of New York, on the — day of ——, 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July of each year, upon the presentation and surrender of the annexed coupons. This bond is one of a series of bonds
28 issued by Wayne county to aid in the construction of the Illinois Southeastern railway, in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1867, and an act amendatory thereto, approved February 24th, 1869, and of an election of the legal voters of said Wayne county, Illinois, held on the 25th day of February,

1868, under the provisions of said act. This bond is not to become a binding obligation upon said county until the following is complied with, to wit: "That said company shall have completed or caused to be completed the whole line of said road within the limits of said county, and the cars running upon the same; and for the payment of said sum of money and the accruing interest thereon in the manner aforesaid, upon the performance of said condition, the faith of said county is hereby irrevocably pledged."

And subscription bonds to said railway company in the following form, to wit:

"Know all men by these presents that the County of Wayne, State of Illinois, acknowledges itself to owe and be indebted to the
29 Illinois Southeastern Railway Company or bearer in the sum of —— dollars, which sum the said County of Wayne promises to pay at the —— Bank, in the city of New York, on the — day of ——, A. D. 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per centum per annum, payable semi-annually, on the first day- of January and July of each year, on the presentation and surrender of the annexed coupons.

This bond is issued, under and pursuant to orders of the county court of Wayne county, for subscription to the capital stock of the Illinois Southeastern Railway Company, as authorized by the laws of the State of Illinois, and the faith of the County of Wayne is hereby firmly pledged for the payment of said principal and interest as aforesaid.

In testimony whereof the said County of Wayne has exe-
[SEAL.] cuted this bond by causing the chairman of the board of supervisors to subscribe his name hereto and to be countersigned by the clerk of this court," &c.

30 Your orator would further represent that the said pretended board of supervisors of Wayne county, on or about the 19th day of September, A. D. 1869, without any authority of law, made, executed, and delivered to Charles A. Beecher, vice-president of a company called the Springfield and Illinois Southeastern railway, thirty-three thousand dollars of the bonds voted to the Illinois Southeastern Railway Company as aforesaid; that on or about the 19th day of November, A. D. 1869, the said board of supervisors made, executed, and delivered to said Charles A. Beecher, vice-president of the Springfield and Illinois Southeastern Railway Company, another thirty-three thousand six hundred dollars of the bonds voted by the voters of Wayne county to the Illinois Southeastern Railway Company, and on the 15th day of January, A. D. 1870, they again delivered thirty-three thousand four hundred dollars of said bonds to said vice-president of said Springfield and Illinois Southeastern Railway Company, making in all one hundred thousand dollars, being all of the subscription bonds voted to be subscribed to the said Illinois Southeastern Railway Com-
31 pany; and on the 6th day of May, A. D. 1870, the said board of supervisors made, executed, and delivered to said vice-

president or other officers of the Springfield and Illinois Southeastern Railway Company one hundred thousand dollars of the bonds voted to be donated to the Illinois Southeastern Railway Company, making in all two hundred thousand dollars of the bonds of said Wayne county donated and subscribed to said Illinois Southeastern Railway Company by the vote of the legal voters of said Wayne county, and by the law under which said vote was had that the same and all of the $200,000 of bonds were so delivered as donation bonds without subscribing or receiving any stock of said railroad company.

Your orators would further represent unto your honor that the law under which the $100,000 of the bonds of Wayne county was pretended to be voted — issued provided that said bonds should only draw interest after maturity, and they should not mature in less than ten years nor more than twenty, at the option of the board of supervisors who issued them; but your orators, in
32 fact, say that the pretended board of supervisors did issue donation bonds and deliver them to the said Springfield and Illinois Southeastern Railway Company, drawing interest from the date thereof, payable semi-annually from date, and that said bonds were dated January 1st, 1870, which issue of said bonds was without authority of law and void; also that the amendatory law, act to amend the charter — Ill. S. E. R. R. Co., dated Feb'y 28th, 1869, is unconstitutional and void; that all of the acts and doings of the pretended board of supervisors was without authority of law.

1st. That there was no competent court to exercise the discretionary power of submitting any proposition to a vote under the act incorporating the Illinois Southeastern Railway Company or any general law.

2nd. That the propositions were in violation of the provisions of said act of incorporation; that the said act — February 25th, A. D. 1867, entitled "An act to change the time of electing certain officers in a county therein named" was unconstitutional and in violation of the provisions of the constitution of 1848, article 7, section 6, as follows:

33 The General Assembly shall provide by a general law for a township organization, under which any county at any general election shall so determine, and whenever any county adopts a township organization so much of this constitution as provides for the management of the fiscal concerns of said county by the county court may be dispensed with, and the affairs of said county may be transacted in such manner as the General Assembly may provide; and, in violation of article 3, section 23, says: It — expedient to dispense with this. No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title.

And, in violation of article 9, section 5, says: The corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with power to assess and collect taxes for corporate purposes.

3rd. That the title of the act did not express the subject-matter,

and that the act did embrace more than one subject and was a local act, affecting Wayne county alone.

34 4th. That no power could be conferred upon the five persons styled supervisors, pretending to act as the board of supervisors for the fifteen towns of said county of Wayne, as it was in violation of the provisions of the constitution of the State of Illinois, as aforestated; that all of their acts as such board implying or confer-ing a discretion- power as a matter of law were null and void.

5th. That the said board had no power to call a special election, as herein*to*fore stated.

6th. That it had no power to canvass the votes and declare an election had; that the said bonds so issued were null and void for want of power pretended to be exercised by the five persons so styled supervisors.

7th. That there was no general or special law whereby discretionary power vested or could be vested in the said five persons pretending to act as the board of supervisors to call a special election as to submit any proposition to the legal voters of said Wayne county to aid the construction of the Illinois Southeastern railway; that

35 the act only authorized counties under township organization, with its duly authorized board of supervisors, to aid by donation to the amount not to exceed $100,000 *by donation*; that the submission of the several propositions to be voted on *and* as one was in violation of any authority of law.

Your orators would further represent that when the vote was taken to donate and subscribe aid to said railway no registration of the voters of the said Wayne county was had or taken, as required by law; that a majority of the voters did not vote; that at the general election prior to the said special election 3,122 votes were cast; that at the special election 1,531 were cast for the proposition and 801 against; that the said election was void and could confer no power to issue the aforesaid bonds.

Your orators would further represent unto your honor that the law of 1867, heretofore referred to, incorporating the Illinois Southeastern Railway Company, gave no power or authority to said county to make subscription to the capital stock thereof, nor was there any power, except to county courts and duly organized boards of

36 supervisors, under township organization; and as *to* the said railway company was organized and acted solely by authority of said special act and not under general laws—

Your orators aver, as a matter of law, that they had no power or authority of law for asking, receiving, or enforcing any subscription to said capital stock, nor was any authority or power given to said Wayne county for the said five persons called supervisors to make such subscription, by virtue of which said bonds so issued by said pretended board of supervisors are null and void.

Your orators would further represent that they are tax-payers and owners of the following-described property, to wit: William N. Borah, S. E. ¼, sec. 2, T. 2 S., R. 8 east; Samuel Trotter, S. E. S. W., sec. 6, T. 1 S., R. 8 east; A. F. Nesbit, lots 46 & 29, town. Mt. Erie; Toliver Simpson, W. ½ S. E., sec. 12, T. 3 S., R. 8 east; J. J. Davis,

S. E. S. E., sec. 2, T. 1 S., R. 7 east; W. B. Heidinger, S. W. S. W., sec. 6, T. 1 S., R. 9 east. H. Tompkins is the owner of the S. ½ S. W., sec. 8, T. 1 N., — 8 —; all of which parties pay taxes each and every year, and each of said parties are [is] also the owners of
37 a large amount of other real and personal property in said Wayne county, Illinois, and are [is] annually taxed to a large amount to pay taxes, a portion of which tax is applied semi-annually to pay interest on said bonds so issued without authority of law by the pretended board of supervisors of Wayne county, Illinois; and that the auditor of the State of Illinois is about to order a levy, or has ordered a levy, of a tax of 48 cents per $100 to pay the interest on said bonds in violation of law and of the rights of your orators; that a levy of taxes is now about to be ordered and a levy about to be assessed against the property above described and the other taxable property of your orators and the other citizens and tax-payers of Wayne county for the year 1885, and is now about to be collected against said taxable property, with which to pay interest upon said bonds; that the authorities of said State of Illinois will proceed to collect a tax upon said taxable property to pay said interest and eventually the principal of the bonds of the said Wayne county issued to said railway company as aforesaid; that the present holders of the bonds and coupons issued by said Wayne
38 county are all unknown to your orators, although they have made diligent search and inquiry therefor; that they are informed and believe that said bonds were sold and transferred by the said railway company to different persons, and that the same are now scattered far and wide over the country, in the hands of divers persons, all unknown to your orators.

Your orators would further represent that the tax to pay said interest and the principal of said bonds is collected by the township and county collectors of Wayne county, and by said township collectors paid into the hands of the said county collectors, who pays the same to the holders of the bonds of said Wayne county; that the tax to pay the same is about to be ordered levied by the auditor of the State of Illinois, who directs the county clerk to levy the same upon all the taxable property in said Wayne county.

Your orators would therefore pray that Joseph E. Wilson, as county clerk; Oliver P. Patterson, as county treasurer of the county of Wayne, State of Illinois; C. P. Sweigert, as auditor of the State of Illinois; Jacob Gross, as treasurer of the State of Illinois,
39 or their successors in office, and the unknown owners and holders of the bonds and coupons issued by the county of Wayne and State of Illinois to the Illinois Southeastern Railway Company, dated in 1869 and 1870, be made parties defendant to this bill of complaint; that a summons may issue ordering and requiring them and each of them to appear on the first day of the next term of the circuit court of Wayne county, Illinois, and true and specific answers make to each allegation of the complainants' bill of complaint, but not under oath, their answers under oath being specially waived, and that upon a final hearing of this cause that your honor will order, adjudge, and decree that the said bonds purporting to be

issued by Wayne county, Illinois, to the Illinois Southeastern Railway Company for subscription and donation to said railway company be declared to be null and void and of no effect as liabilities of said county; that said defendants be ordered and directed to bring into court all of said bonds and the coupons thereunto belonging, and that the same be cancelled by the clerk of this court and destroyed; that your honors will grant a perpetual injunction against all of said defendants, forever enjoining and restrain-
40 ing them from computing, extending, levying, or collecting, or attempting to compute, extend, levy, or collect, any tax for the purpose of paying or attempting to pay any of the principal or interest on any of the bonds or coupons issued by Wayne county to the Illinois Southeastern Railway Company or bearer and bearing date in the years 1869 and 1870, for either donation or subscription to said railway company; and that your honors will grant such other and further relief in the premises as to equity and good conscience may belong.

Your orators will ever pray, *and* etc.

WM. N. BORAH,
A. F. NESBIT,
SAMUEL TROTTER,
TOLIVER SIMPSON,
J. J. DAVIES,
W. B. HEIDINBERGER, AND
H. TOMPKINS,
Per BELL AND GREEN AND
H. TOMPKINS,
Their Attorneys.

STATE OF ILLINOIS, } ss:
Wabash County, }

H. Tompkins, being duly sworn, on oath states that he is one of the complainants in the above bill named; that he has
41 heard said bill read and knows the contents thereof, and that the matters and things therein stated are true in substance and in fact; that the rights of complainants will be unduly prejudiced unless an injunction issue at once, and without notice, to the defendants, for the reason that the county clerk of Wayne county is about to extend the taxes sought to be enjoined, and will do so before notice can be given and a writ of injunction obtained.

H. TOMPKINS.

Subscribed and sworn to this 25th day of November, A. D. 1885, before me—

[SEAL.] J. T. BURKETT, *Clerk.*

AT CHAMBERS, *November 20th*, 1885.

Let an injunction issue as prayed for in the foregoing bill, upon complainants entering into a good and sufficient bond in the sum of $25,000, to be approved by the clerk.

WILLIAM C. JONES, *Judge.*

To clerk of circuit court, Wayne county, Illinois.

42 *Summons.*

STATE OF ILLINOIS, } ss:
Wayne County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Hon. Charles P. Swigert (auditor public accounts of the State of Illinois) and Hon. Jacob Gross (treasurer of the State of Illinois), impleaded with Joseph E. Wilson (county clerk of Wayne county, Illinois) and Oliver P. Patterson (county treasurer of Wayne county, Illinois), if they shall be found in your county, personally to be and appear before the circuit court of said Wayne county on the first day of the next term thereof, to be holden at the court-house, at Fairfield, in said Wayne county, on the third Monday of March, 1886, to answer unto William N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davies, and William B. Heidinberger in their certain bill of complaint for injunction to enjoin the payment of the interest on the bonds issued by Wayne county, Ills., to the Ills. S. E. R. R. Company and for the cancellation of said bonds, filed in said court on the chancery side thereof; and have you then and there this writ, with an indorsement thereon in what manner you shall have executed
43 the same.

Witness R. E. Mabry, clerk of our said court, and the seal thereof, at Fairfield, this 11th day of January, A. D. 1886.

R. E. MABRY, *Clerk.*

STATE OF ILLINOIS, } ss:
Sangamon County, }

I have duly served the within by reading the same to each within named—Hon. Charles P. Swigert, auditor, &c., and Jacob Gross, treasurer, &c.—and at the same time delivering to each of them a true copy thereof this 27th day of January, 1886.

A. C. MALONE, *Sheriff.*

Filed February 19th, 1886.

R. E. MABRY, *Clerk.*

Sheriff's fees:

Service	$1 50
2 miles travel	20
Return	10
	$1 80

A. C. MALONE, *Sheriff.*

44 *Summons.*

STATE OF ILLINOIS, } ss:
Wayne County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Joseph E. Wilson (county clerk of Wayne county, of Illinois), and Oliver P. Patterson (county treasurer of Wayne county, Illinois), impleaded with Charles P. Swigert (auditor of public accounts of the State — Illinois) and Hon. Jacob Gross (treasurer of the State of Illinois), if they shall be found in your county, personally to be and appear before the circuit court of said Wayne county on the first day of the next term thereof, to be holden at the court-house, at Fairfield, in said Wayne county, on the third Monday of March, 1886, to answer unto William N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davies, and William B. Heidinberger in their certain bill of complaint for injunction to enjoin the payment of the interest on bonds issued by Wayne county, Ills., to the Ills. S. E. R. R. Company and for the cancellation of said bonds, filed in said court on the chancery
45 side thereof; and have you then and their [there] this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. E. Mabry, clerk of our said court, and the
[SEAL.] seal thereof, at Fairfield, this 11th day of January, A. D. 1886.

R. E. MABRY, *Clerk.*

STATE OF ILLINOIS, } ss:
Wayne County, }

I have duly served the within by reading the same to the within-named Joseph E. Wilson, county clerk of Wayne county, Illinois, and Oliver P. Patterson, county treasurer of Wayne county, Illinois, and at the same time delivering to each of them a true copy thereof this 3rd day of February, 1886.

J. B. CARSON, *Sheriff.*
J. B. CAMPBELL, *Deputy.*

Sheriff's fees:

Service	$2 00
Return	10
	$2 10

Filed Feb. 3rd.

R. E. MABRY, *Clerk.*

46 *Injunction Bond.*

Know all men by these presents that we, Wm. N. Borah, —— ——, of the county of Wayne and State of Illinois, are held and firmly bound unto Joseph E. Wilson, Co. cl'k, and O. P. Patterson, Co. treas., of Wayne county, Ills., and C. P. Swigert, auditor of State, county and State aforesaid, in the sum of twenty-five thousand dollars, to be paid to the said named parties aforesaid, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this — day of ——, A. D. 188–.

Whereas the above bounden Wm. N. Borah has filed his bill of complaint in the circuit court of the county of Wayne and State of Illinois, against the above-named J. E. Wilson, O. P. Patterson, and C. P. Swigert, praying, among other things, for an injunction to restrain; and whereas W. C. Jones, the judge of said court, has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Wm. N. Borah *et al.* giving bond and security,

47 as provided by law and as required by the order of said judge granting said injunction: Now, therefore, the condition of the above obligation is such that if the above-bounden Wm. N. Borah, —— ——, their executors, administrators, or any of them, shall and do well and truly pay or cause to be paid to the said J. E. Wilson, O. P. Patterson, and C. P. Swigert, his executors, administrators, or assigns, twenty-five thousand dollars and all costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved, and also —, then the above obligation shall be void; otherwise to be and remain in full force and virtue.

William N. Borah.	[L. S.]	Samuel W. Trotter.	[L. S.]
Andrew F. Nesbit.	[L. S.]	Toliver Simpson.	[L. S.]
Jasper J. Davis.	[L. S.]	William B. Heidinger.	[L. S.]
Lewis D. Leach.	[L. S.]	D. W. Barkley.	[L. S.]
P. R. King.	[L. S.]	George A. Ricketts.	[L. S.]
Washington N. Geyer.	[L. S.]	William Saudlin.	[L. S.]
Martin M. Wheeler.	[L. S.]	G. W. Mabery.	[L. S.]
L. Knols.	[L. S.]	Levi Wheeler.	[L. S.]
Joseph Fitch.	[L. S.]	John L. Wagoner.	[L. S.]
John Hubbel.	[L. S.]	Amos Holman.	[L. S.]
Seymour Brown.	[L. S.]	Oliver P. Tidball.	[L. S.]
Peter Banker.	[L. S.]	J. R. Shelton.	[L. S.]
T. H. B. King.	[L. S.]	Milton Holmes.	[L. S.]
48 Mark Duke.	[L. S.]	George Molt.	[L. S.]
C. Molt.	[L. S.]	C. H. Molt.	[L. S.]
Christ Blessing.	[L. S.]	J. T. Smith.	[L. S.]
A. R. Johnson.	[L. S.]	Jonathan Attebery.	[L. S.]
James Padgett.	[L. S.]	Ezra Banker.	[L. S.]
Isaac Ullom.	[L. S.]	Henra Hubble.	[S. E.]
J. P. Jordan.	[S. E.]	W. F. McKelvey.	[S. E.]
B. F. Best.	[S. E.]	R. Bowman.	[S. E.]

C. W. Burgess.	[S. E.]	J. T. Price.	[S. E.]
W. C. Ake.	[S. E.]	W. C. Camp.	[S. E.]
J. W. Bradshaw.	[S. E.]	Samuel Mundy.	[S. E.]
Andrew Bleakly.	[S. E.]	Davig Berg.	[S. E.]
Wm. Shannon.	[S. E.]	W. H. Totten.	[S. E.]
V. R. Price.	[S. E.]	J. W. Leneff.	[S. E.]
Wm. H. Danbs.	[S. E.]	Eli Holmes.	[S. E.]
E. M. Borah.	[S. E.]	H. H. Moore.	[S. E.]
A. L. Wall.	[S. E.]	Samuel S. McDonell.	[S. E.]
W. V. Goodell.	[S. E.]	Albert Simms.	[S. E.]
Charles Ill.	[S. E.]	Wm. Collins.	[S. E.]
W. M. Shearer.	[S. E.]		

Approved and filed March 22nd, 1886.

R. E. MABRY,
Circuit Clerk.

Injunction Writ.

STATE OF ILLINOIS, } ss:
Wayne County, }

49 The People of the State of Illinois to Joseph E. Wilson (Co. cl'k Wayne Co., Ills.), Charles P. Swigert (State auditor of the State of Illinois), and Hon. Jacob Gross (State treasurer of the State of Ills.), and to your successors in office, and to your solicitors, attorneys, agents, and servants, and to each and every of them, Greeting:

Whereas it has been represented to the Hon. William C. Jones, one of the judges of the second judicial circuit of the State of Illinois, on the part of William N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, W. B. Heidinberger, and H. Tompkins, complainants, in their certain bill of complaint exhibited before said judge and filed in the circuit court of the county of Wayne and State of Illinois against you, the said Joseph E. Wilson (Co. cl'k), Oliver P. Patterson (Co. treas.), Hon. Chas. P. Swigert (State auditor), and Hon. Jacob Gross (State treasurer), and your successors in office, to be relieved touching the matters therein complained of, in which said bill is stated, among other things, that you are combining and confederating with others to injure the complainants touching the matters set forth in the said bill, and that your actings and
50 doings in the premises are contrary to equity and good conscience; and the said judge having under his hand endorsed upon said bill an order that a writ of injunction issue out of said court according to the prayer of said bill, we therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said Joseph E. Wilson (Co. cl'k), Oliver P. Patterson (Co. treas.), Hon. Chas. P. Swigert (State auditor), and Hon. Jacob Gross (State treasurer), and your successors in office, and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from computing, extending, levying, collecting, or attempting to compute, extend, levy, or collect, any

tax for the purpose of paying or attempting to pay any of the principal or interest on any of the bonds or coupons issued by the county of Wayne (State of Illinois) to the Ills. S. E. Railroad Co. or bearer, and bearing date in the years A. D. 1869 and 1870, for either donation or subscription to the said railway company until this honorable court in chancery sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the sheriff of said county to execute and return in due form of law.

51 Witness R. E. Mabry, clerk of the said circuit court, and [SEAL.] of the seal thereof, at Fairfield, in said county, this 22nd day of March, 1886.

R. E. MABRY, *Clerk.*

Served this writ on the within-named Joseph E. Wilson (Co. clerk) and Oliver P. Patterson (county treasurer) by delivering a true copy thereof to each of them the 22d day of March, 1886.

Fees:

Service	$2 00
Return	10
Total	$2 10

JOHN B. CAMPBELL,
Deputy Sheriff.

Filed Mar. 22d, 1886.

R. E. MABRY, *Clerk.*

The following is the order of the court in this cause:

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Wayne County, }

In the Circuit Court. March Term, A. D. 1886.

Pleas before the Honorable Chauncey S. Couger, one of the three judges of the second judicial circuit of the State of Illinois and presiding judge of the circuit court of Wayne county, in the State aforesaid, at a term thereof begun and held at the *the* court-
52 house, in the city of Fairfield, in said county, on the fifteenth day (being the third Monday) of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred and tenth.

Present: Hon. Chauncey S. Couger, one of the three judges of the second judicial circuit of the State of Illinois; Jacob R. Creighton, State's attorney; Robert E. Mabry, clerk; Isaac B. Carson, sheriff.

Attest: ROBERT E. MABRY, *Clerk.*

WILLIAM N. BORAH, SAMUEL TROTTER, A. F. NESBIT, Toliver Simpson, J. J. Davis, W. B. Heidinberger, and H. Tompkins
vs.
JOSEPH E. WILSON, County Clerk; O. P. PATTERSON, Treasurer; Charles P. Swigert, Auditor of State, and Jacob Gross, State Treasurer.
} Injunction.

53 And now, on this 8th day of the term, by their counsel, come Charles P. Swigert, auditor of State; Joseph E. Wilson, county clerk, and O. P. Patterson, county treasurer, and file demurrer to complainants' bill. Jacob Gross, State treasurer, being duly called, comes not, but herein makes default.

And now comes John Ware, one of the respondents herein, under the name and style of the unknown holders of the bonds herein, and files his petition herein to remove this cause to the circuit court of the United States for the southern district of Illinois.

And now comes the said John Ware and files his bond herein, which bond is hereby by the court approved. Thereupon the court doth adjudge and order that the petition of the said John Ware for the removal of said cause to the United States circuit court for the southern district of Illinois be, and the same is hereby, by the court granted, and that said cause be removed as prayed by the said John Ware to the circuit court of the United States of America for the southern district of Illinois, as the law in such cases provides. Ordered further that the clerk of this court do make out and forward certified copies of all papers herein, together with a certified copy of the order of this court herein.

54 *Demurrer.*

STATE OF ILLINOIS, *Wayne County,* } *ss:*

Wayne Circuit Court, to March Term, 1886.

WM. N. BORAH *et al.*
vs.
J. E. WILSON *et al.*
} Chancery.

And now comes the said defendants, Charles P. Swigert, State auditor; Jos. E. Wilson, county clerk, and O. P. Patterson, county treasurer, and says the matters and things as charged in complainants' bill, as therein charged and set forth, are not sufficient in law for the said complainants to maintain their aforesaid action thereof against the said defendants, and he, the said defendant, is not bound by law to answer the same; and this he is ready to verify. Wherefore he prays judgment.

By O. J. BAILEY, *His Att'y.*

Filed Mar. 22nd, 1886.

R. E. MABRY, *Clerk.*

Petition for Removal to U. S. Court.

STATE OF ILLINOIS, *Wayne County:*

In the Circuit Court. March Term, A. D. 1886.

55 WM. N. BORAH *et al.* } Bill in Chancery for In-
vs. junction and Relief.
JOSEPH E. WILSON, County Clerk, *et al.* }

To the honorable presiding judge of said court, in chancery sitting:

The petition of John Ware, of Waterville, in the State of Maine, respectfully shows that he is one of the defendants in said suit, made so in said bill under the name and style of unknown holder of bonds and coupons issued by the county of Wayne, in the State of Illinois, to the Illinois Southeastern Railway Company, donated in 1869 and 1870; that he so owns and holds numbers 21, 93, 94, and 97, of one thousand dollars each, all dated May 6th, 1870, due January 1st, 1890, and also bond number 393, dated January 20th, 1870, and payable July 1st, 1889, for one hundred dollars of said bonds; that complainants acts [ask] in said bill of complaint in this suit a decree permanently enjoining the payment of said bonds, with others of the same issue, and the coupons for interest thereon, declaring the same to be null and void and of no effect as liabilities of said county of Wayne, and ordering them brought into court to be cancelled; that the amount in dispute in this suit, therefore, be-
56 tween this petitioner and the said complainants exceeds the sum of five hundred dollars, exclusive of costs.

Your petitioner further shows that the purpose of said suit is to so annul said *said* bonds and coupons and enjoin their payment because of certain alleged supposed irregularities in the voting and issuing of the same, which purpose will more fully and at large appear by a reference to said bill of complaint therein, which is hereby made; that the said complainants in said suit are and at the time of the bringing thereof were citizens of the State of Illinois, while your petitioner is and was at the time of the bringing of this suit a citizen of the State of Maine; that in the said suit there is a controversy between the said complainants and your petitioner concerning the validity of petitioner's said bonds and coupons and concerning the method of collecting the payment of the sum [same] by and through taxation, which will more fully and at large appear by said reference to the claims set up in said bill, which claims are denied
57 in to [toto] by this petitioner, which said controversy can be fully determined as between the complainants and your petitioners without the presence of other defendants in said suit.

Your petitioner further shows that this cause has not yet been tried, but is pending for trial at said March term of said circuit court of Wayne county, at which said cause could first be tried, being the time to which the same was commenced; that your petitioner desires to remove this suit, before the trial thereof, into the next circuit

court of the United States to be held in the southern district of the State of Illinois, in the seventh circuit, in pursuance of the provisions of law as contained in the act of Congress approved March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of cases from State courts, and for other purposes."

And your petitioner further shows that he is ready and willing to give and herewith offers and files a bond, with good and sufficient security, for his entering in the next circuit court of the United States to be held in said southern district of Illinois, on the
58 first day of the next session thereof, a copy of the records in this suit and for paying all costs that may be awarded by the said circuit court of the United States if it shall hold that this suit was wrongfully or improperly removed thereto, and for doing all things required by him in this connection under the provisions of said act of Congress, which said bond is executed by your petitioner as principal and Geo. M. Brinkerhoff, of Springfield, Illinois, as surety, and is in the penal sum of five hundred dollars.

Your petitioner therefore prays that said bond be accepted as good and sufficient security, and that this suit be removed into the next circuit court of the United States to be held in the said southern district of Illinois, in said 7th circuit, pursuant to the statute of the United States in such cases made and provided, and that no further proceedings be had therein in this court.

JOHN WARE.

STATE OF ILLINOIS, } ss:
Peoria County, }

Oliver J. Bailey, being first sworn according to law, on his oath states, first, that he is acquainted with the handwriting of John Ware, whose signature appears to the foregoing petition; that
59 the same is the genuine signature of said Ware; and, second, that he is acquainted with the contents of said petition, and that the statements therein (excepting such as are made on information and belief) are true, as affiant has reason to know, and he believes that all the allegations or statements in said petition, whether made on information and belief or otherwise, to be true as stated and alleged; and further affiant saith not.

OLIVER J. BAILEY.

Subscribed and sworn to before me, at Peoria, Illinois, this 18th day of March, A. D. 1886.

[SEAL.] SAMUEL C. GALLUP,
Notary Public.

Filed March 22d, 1886.

R. E. MABRY, *Clerk.*

And now comes John Ware, by his attorney, and files the following bond, viz:

Know all men by these presents that we, John Ware, of Waterville, Maine, as principal, and Geo. M. Brinkerhoff, of Springfield,

Illinois, as surety, are held and firmly bound to William N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, and W. B. Heidinberger, their heirs, administrators, and assigns, in
60 the penal sum of five hundred dollars, good and lawful money of the United States; for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 15th day of March, A. D. 1886.

The condition of the above obligation is such that whereas, on the petition of John Ware, filed in the circuit court of Wayne county, State of Illinois, in the chancery case of Wm. N. Borah *et al. vs.* Joseph E. Wilson, county clerk, *et al.*, commenced to the March term, A. D. 1886, thereof, wherein the above-named parties are complainants and said Ware is defendant as "unknown holder," &c., pursuant to the act of Congress of March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, to regulate the removal of causes from State courts, and for other purposes," said State circuit court has ordered the removal of said cause, pending therein, to the next circuit court of the United States in the southern district of Illinois:

Now, therefore, if said Ware shall enter in the next circuit
61 court of the United States to be held in said southern district of Illinois, on the first day of the next session thereof, a copy of the record of said suit, and shall pay all the costs that may be awarded by the said circuit court of the United States against him if it shall hold that this said suit, was wrongfully and improperly removed thereto, and shall do all things required by him in said connection under the provisions of said act of Congress, then this obligation to be void; otherwise to remain in full force and effect.

JOHN WARE. [SEAL.]
GEO. M. BRINKERHOFF. [SEAL.]
R. D. ADAMS. [SEAL.]

STATE OF ILLINOIS, } ss:
Peoria County, }

Oliver J. Bailey, being first sworn according to law, on his oath doth depose and say that he is acquainted with the handwriting of both John Ware and Geo. M. Brinkerhoff, and that the signatures appearing to the foregoing removal bond are the genuine signatures of said John Ware and George M. Brinkerhoff; and further affiant saith not.

OLIVER J. BAILEY.

[SEAL.] Subscribed and sworn to before me, at Peoria, Illinois, this 18th day of March, A. D. 1886.

SAMUEL C. GALLUP,
Notary Public.

Filed Mar. 22nd, 1886.

R. E. MABRY, *Clerk.*

62 STATE OF ILLINOIS, } ss:
Wayne County, }

I, Robert E. Mabry, clerk of the circuit court in and for the county of Wayne and State of Illinois, do hereby certify that the above and foregoing contains a true, complete, and perfect copy of all the papers filed in our court in case of William N. Borah *et al. vs.* Joseph E. Wilson (Co. cl'k) *et al.* (injunction), together with a true, perfect, and complete copy of the order of the court in said cause.

In testimony whereof I hereunto set my hand and affix
[L. S.] the seal of said court, at Fairfield, Illinois, this May 12th, A. D. 1886.

ROBERT E. MABRY, *Clerk.*

(Endorsed:) Filed June 7th, 1886. J. A. Jones, clerk.

And afterwards, to wit, on the 24th day of June, A. D. 1886, came the complainants, by their solicitors, and filed in said clerk's office their petition for renewal of injunction in said cause; which said petition is in the words and figures following, to wit:

63 Circuit Court United States, Southern District of Illinois, *ss.*
June Term, 1886.

WILLIAM N. BORAH *et al.* } Bill for an Injunction and — Cancel
vs. } Bonds Issued by the County of
JOSEPH E. WILSON *et al.* } Wayne.

Now comes Wm. N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, Wm. B. Heidenger, by their attorneys, H. Tompkins, Bell & Greene, and represents to the court that the said cause was instituted in Wayne county circuit court; that an injunction was granted in the above-entitled cause by Hon. Wm. C. Jones, one of the circuit judges of the State of Illinois, as prayed by complainants in their said bill, on condition that they give a bond in the sum of $25,000, to be approved by the clerk of the Wayne county circuit court; that the said bond was so given and duly approved and filed in said cause. When the same came on to be heard at the March term of the circuit court of Wayne county, State of Illinois, 1886, certain defendants intervened, and on petition the cause was removed to this court; that prior to the removal
64 the said writ was duly served on Joseph E. Wilson, county clerk, and O. P. Patterson, county treasurer and collector, but not on the State auditor nor State treasurer; that the record in said cause is now filed in this court. Whereupon your orator prays that the said injunction be renewed, and that the said writ of injunction may issue and be served, as prayed in the bill of complaint, on the said defendants, Chas. P. Swigert, State auditor, and J. Gross, State treasurer of the State of Illinois.

H. THOMPKINS, BELL AND GREEN,
Compl'ts' Att'ys & Sol's.

(Endorsed:) Filed June 24th, 1886. J. A. Jones, clerk.

And afterwards, to wit, on Thursday, the 24th day of June, at the June term of said court, in the year last aforesaid, the following further proceedings were had and entered of record in said cause, to wit:

WM. N. BORAH *et al.*
vs.
JOSEPH E. WILSON *et al.* } In Chancery.

And now, on this 24th day of June, 1886, come the complainants, by their counsel, and on their motion leave is given them to amend their bill, and the amendment is filed.

65 And afterwards, to wit, on July 24th, A. D. 1886, came said complainants, by their solicitors, and filed in said clerk's office their amended bill of complaint herein; which said amended bill is in the words and figures following, to wit:

Circuit Court of Wayne County, Illinois. March Term, 1886.

WILLIAM N. BORAH, SAMUEL TROTTER, A. F. Nisbet, Toliver Simpson, J. J. Davis, and W. B. Heidinger
vs.
JOE E. WILSON, County Clerk; O. P. Patterson, County Collector and Treasurer; Chas. P. Sweigert, Auditor State of Illinois, and J. Gross, Treasurer State of Illinois.

Bill for Injunction and to Cancel Bonds Issued by the County of Wayne.

To the honorable judge of the circuit court of the second judicial district, State of Illinois, in chancery sitting, in and for the county of Wayne:

Your orators, William N. Borah, Samuel Trotter, A. F. Nisbet, Toliver Simpson, J. J. Davis, W. B. Heidinger, and H. Tompkins, would respectfully represent unto your honor that they are owners of real estate and tax-payers in the county of Wayne and State of Illinois, and that they

County of Wayne adopted township organization June, 1860, with fifteen towns.

66 bring this suit for themselves and in behalf of all other tax-payers, and represent "that the county of Wayne, under provisions of the constitution of the State of Illinois of 1848, adopted township organization as the mode of government for the said county, and entered fully upon the same at the June term of 1860;" that the provisions of the constitution is [are] as follows: Article 7, section 6, as follows:

The General Assembly shall provide by a general law for a township organization, under which any county may organize wherever a majority of the legal voters — the county at a gen-

Article 7, section 6.

Township organization by general law.

eral election shall so determine; and whenever any county shall adopt a township organization so much of this constitution as provides for the management of the fiscal concerns of the said county by the county court may be dispensed with, and the affairs of the county may be transacted in such manner as the General Assembly shall provide.

General law for township organization.

That the Legislature of the State of Illinois did enact a general law to adopt township organization Feb. 16th, 1851, provided as follows:

SECTION 1. "That at any general election that may be holden in the several counties in this State the qualified voters in any county may vote for or against township organization in such county."

SECTION 5. "Provided that the county board at its next session appoint three commissioners, residents of the county, to divide the county into towns." * * *

SECTION 6. The commissioners so appointed shall proceed to divide such county into towns, making them conform to the townships according to Government surveys. Fractional townships may be attached to adjoining towns where the number of the inhabitants or the amount
67 thereof shall not be sufficient for a separate town. Where a township shall have too few inhabitants for a separate organization, then such township may be added to some adjoining town or divided between two or more towns for the time being, and when a creek or river so divides a township that it is inconvenient for transacting town business, then such creek or river may be made the town boundary, and the fraction so formed may be disposed of as other fractional townships.

SECTION 7. Towns shall be named in accordance with the express wish of the inhabitants of the town, and if there shall not be a degree of unanimity as to the name the commissioners may designate the name: Provided, That the county board shall have power to change the name of any town in their respective counties upon a petition of a majority of the voters of said town: And provided further, That no two towns in the State or county shall have the same name.

That the county court did appoint commissioners, who proceeded to divide the county into 15 towns, as shown by the following report:

Report of Commissioners.

March Term, 1860.

To the honorable county court of Wayne county, Illinois:

Wayne county organized under township organization.

The undersigned, who was [were] appointed at the last December term of said court, commissioned to lay off said county of Wayne into towns preparatory to organizing said county under the township organization law, would respectfully report that they have laid off said county into towns, with names as follows, viz:

Names.

Arrington, Barnhill, Bedford, Big Mound, Brush Creek, Elm River, Four Mile, Hickory Hill, Indian Prairie, Jasper, Lamard, Leech, Massilon, Mount Erie, and Zif, with boundary as shown by Exhibit A, hereto attached, which is made a part of this bill.

68 That sec. 21 provides a manner how the said government might be discontinued and return had to a county board, consisting of a county judge and two associates, as follows:

Provisions how to abolish township organization.

Upon the petition of at least one-fifth of the legal voters of any county having adopted township organization, to be ascertained by the vote cast at the last preceding Presidential election, the county board shall cause to be submitted to the voters of such county at the next general election the question of continuance of township organization, to be voted on by ballot, written or printed, or partly written and partly printed, for the continuance of township organization or against the continuance of township organization; notice to be given and the votes to be canvassed and returns made in like manner as in this act provided in reference to a vote on the adoption of township organization.

County of Wayne never changed her form of government.

Your orators further represent that the management of the fiscal concerns of the county, as adopted, has never been changed by any vote of the voters of Wayne county or by provision of any general law regulating township organization.

That the division of the county into fifteen towns, as made, reported, and adopted by the county court on the 1st day of March, 1860, has remained the same to this date.

Your orators further represent that the Legislature of the State of Illinois passed an act entitled An act to incorporate the Ills. Southeastern R. R. Co., which was approved by the Governor on the

25th of Feb., 1867, and by which act, among other things, it provided that the said company shall have power to unite its road with any other road now constructed or which may hereafter be constructed. * * *

SEC. 7. That the Co. court or board of su-
69 pervisors, where such county has adopted township organization, of any county into or through which this road or its branches may pass is hereby authorized and fully empowered to donate to said company, as a bonus or inducement towards building of said railroad or its branches, any sum not exceeding one hundred thousand dollars, and may order the clerk of the county court or board of supervisors of said county to issue bonds of the county to the amount donated, and such clerk of the court or board of supervisors, as the case may be, of such county shall countersign and deliver said bonds so issued to the president and directors of said railroad Co., which said bonds may bear any rate of interest not to exceed ten per cent. per annum, payable at maturity of the * * * bonds, as hereafter expressed, and yearly thereafter: Provided, That no donation by the county court or board of supervisors of any such county shall be of a greater sum than fifty thousand dollars until after the question of such larger donation shall have been submitted to the legal voters of such county at an election to be called, conducted, returns made, canvassed, and published in the usual manner of calling, conducting, making returns, canvassing, and publishing special county elections, at which election each voter shall vote a ticket upon which is written or printed the words, "For donation" or "Against donation;" and if a majority of the ballots cast at such an election be in favor of donation it shall be the duty of the county court or board of supervisors of such county so voting to donate some amount, not less than fifty thousand dollars nor more than one hundred thousand dollars, to said company, and to order the issuing of bonds of the county, as hereinbefore provided, for the amount so donated, which bonds shall be made payable to the directors of said company and may be in any denomination of not less than one hundred nor more than one
70 thousand dollars each, at the discretion of the said county court so issuing the same: Provided, That the bonds of any county so donated and issued shall not mature nor become

Incorporation of the Ill. S. E. R. R. Co., with its provisions.

due or payable nor any of the interest accruing thereon or upon any part thereof until the said company shall have completed so much of the line of said road or its branches as may be within the county so donating, or when some certain specified section or part of the said road shall have been finished as may be agreed upon between this company and the county court or board of supervisors of the county making the donation, and each of said bonds shall declare upon its face the conditions upon which it is to become due. It was further provided by said act that said railroad should be divided into sections of not less than five miles each, and that it should organize under the provisions of section four of said act within one year from and after its passage, and should commence the construction of said railroad in good faith within three years, and should complete the same within twenty years; which act was approved and went into force Feb. 25th, 1867.

Ill. S. E. R. R. Co. organized.

Your orators would further represent that the said railroad company did duly organize under the said act and became a body corporate, but without any stock subscription being paid or assessed.

Pretended board of supervisors created by special act of the Legislature.

That five persons claiming to be the board of supervisors of said county of Wayne, claiming to represent the fifteen towns of said county, and claiming to act under the act of the Legislature of the State of Illinois approved by the Governor of the State Feb. 28th, 1867, entitled "An act to change the time of electing certain officers in a county therein named," as follows:

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General
71 Assembly, That the board of supervisors in Wayne county shall consist of five persons, to be elected in the following manner, to wit: The townships of Four Mile, Hickory Hill, and Arrington shall constitute the first electoral district of said county, and shall be entitled to one member of said board. The townships of Big Mound, Lamard, Jasper, and Barnhill shall constitute the second electoral district of said county and be entitled to two members of said court [board]. The townships of Leech, Massilon, Mt. Erie, and Elm River shall constitute the third electoral district in said county and be entitled to one member of said board. The remainder of said Wayne county shall constitute the fourth electoral

district, and shall be entitled to one member of said board.

SECTION 2. There shall be elected on the first Tuesday in April, one thousand eight hundred and sixty-seven, and every four years thereafter, in each of said electoral districts, one member of the board of supervisors of said Wayne county, who shall each hold their office for the term of four years, or until their successors are elected and qualified, except in the second district of said county, which shall elect two members of said board, as provided in section one of this act, who shall hold their office for the said term of four years, and until their successors are elected and qualified.

SECTION 3. Said board, so composed, shall, at their first meeting, organize by electing one of their number chairman for the term of four years, who shall be allowed to vote upon all questions as other members of said board; and said board, when so organized, shall do and perform all duties enjoined upon the board of supervisors, acting under the general township organization laws of this State, and shall have all the powers and privileges of boards of supervisors acting under such general township organization laws, and any three of said board shall constitute a quorum for the transaction of any business.

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SECTION 4. The members of said board shall each receive such compensation *per diem* as they may fix, not to exceed four dollars per day for each day in which said members shall be engaged to [in] attending said court.

SECTION 7. All duties not herein provided for to be done and performed by virtue of the township organization laws of this State by the supervisors of towns of the different towns shall be done and performed in said county by a justice of the peace in such town, who shall be selected by the town clerk, town assessor, and town collector for that purpose each year, as soon as practicable after the election of town officers in such towns; and said town clerk, assessor, and collector shall have the power to fill the vacancy occasioned by death, resignation, or refusal to serve of said justice of the peace. Such justice of the peace so appointed shall hold such appointment for the term of one year and until his successor shall be appointed and his appointment shall be entered of record by the town clerk, and he shall receive the same compensation provided by law for the supervisors for like services; but nothing in this act shall be

construed to change or in any manner affect the place or manner of voting, as now established by law, in the different precincts in said county.

SECTION 8. This act shall be deemed and taken as a public act and be in force from and after its passage.

And your orators represent that the five persons under the said act assumed their office as district supervisors at the June term, 1867, without any order or notice of a change in the government of the fiscal affairs of the county of Wayne and without there being any record in records of Wayne county of a call for an election, or of an election, or of there [their] being elected, and retained the same until June, 1872; that, by a general expression and demand of the people in opposition to the usurpation of the fiscal affairs of the county by the said five persons, the Legislature did, on the 12th of April, 1871, repeal the said act creating said district supervisors, and enacted that act reducing township organization into one act be re-enacted; that during their said usurpation the said district supervisors under the said act did, on the 18th day of January, 1868, while the county was under township organization with fifteen towns, as had before been divided, submit to the voters of said county the proposition, claiming to be under section seven of said act, for the in-
73 corporation of the Illinois Southeastern Railroad Co., as heretofore set out—several propositions, as follows, to be voted upon by the legal voters of the county of Wayne as one proposition:

(A true copy.)

Called Session. January, A. D. 1868.

STATE OF ILLINOIS, } ss:
Wayne County, }

Board of Supervisors, Call- Session. January Term, A. D. 1868.

On Saturday, the 18th day of January, A. D. 1868, being the 18th day of January, 1868. Present: David Wingate, chairman; Oliver Holmes, clerk; Daniel Haines, sheriff; Levi M. Cisne, Miles Harris, Jacob B. Borah, and Copeland McKelvy.

Amendment.

Be it remembered that on Saturday, the 18th day of January, 1868, the same being as yet one of the days of the aforesaid meeting of said board of supervisors, the following, among other, proceedings was [were] had and entered of record on said board in words and figures following, to wit:

On motion, it is ordered that the notice filed in the clerk's office by Miles Harris and Jacob B. Borah for a call- meeting of the aforesaid board be entered of record, and is as follows, and was filed in the clerk's office Jan. 13th, 1868:

To Daniel Wingate, Levi Cisne, and Copeland McKelvy, supervisors of Wayne county, Illinois:

GENTLEMEN: There will be a special meeting of the board of supervisors of Wayne county, Illinois, convened at Fairfield, in said county, on Saturday, the 18th day of January, A. D. 1868, for the purpose of ordering an election for submitting to the people of Wayne county the question of donating and subscribing county bonds to aid in the construction of a railroad through Wayne county, and such other purposes and business as the said court may see proper to transact.

Witness our hands and seals this 13th day of January, 1868.

JACOB B. BORAH. [SEAL.]
MILES H. HARRIS. [SEAL.]

74 On motion of Levi M. Cisne, it is ordered by the board of supervisors of Wayne county, in the State of Illinois, that a special election shall be held at the usual places of voting in the said county of Wayne, on the 25th day of February, A. D. 1868, upon the following propositions, to wit:

Action of the pretended board of supervisors.

1. That the county of Wayne subscribe the sum of one hundred thousand dollars to the capital stock of the Illinois Southeastern Railway Company.

2. That in payment for such subscription to the capital stock of said company bonds of the said county of Wayne be issued to said railway company, one-half of the amount to be in bonds of the denomination of one hundred dollars each, and the other half of the said bonds to be in the denomination of not less than five hundred dollars nor more than one thousand dollars each, said bonds to bear interest at the rate of seven per cent.

per annum from the date of their delivery to the said railway company, payable half-yearly in the city of New York, on the first days of January and July of each year, said bonds to be so drawn that the county of Wayne may pay them at any time after five years from the date of issuing the same, but the said county of Wayne shall not be compelled to pay the principal of any of said bonds until after the expiration of twenty years from the date of issuing the same, and that the faith of the county of Wayne be pledged for the payment of the interest accruing upon said bonds and for the ultimate payment of the principal:

Provided that the said bonds so issued shall be delivered to the said railway company and become binding upon the county of Wayne in the following manner, to wit:

The board of supervisors of Wayne county shall deliver one-third of the amount of said one
75 hundred thousand of bonds to the said railway company when ten consecutive miles of the grade, bridging, and tying of said railroad shall be ready for the iron in said county of Wayne, and not sooner; and when another ten miles of said railroad shall be completed as aforesaid in said county the board of supervisors shall deliver to said railway company another one-third of the amount of said one hundred thousand dollars of bonds, and not sooner; and when the whole of the grading, bridging, and tying of said railroad shall be completed and ready for the iron of said railroad in the said county of Wayne the board of supervisors of said county shall deliver to the said railway company the remainder of said one hundred thousand dollars of bonds, and not sooner.

3. That a tax upon all the taxable property of said Wayne county be annually levied and collected sufficient to pay the interest upon said bonds as it becomes due and payable, according to the conditions of said bonds.

That all the aforesaid propositions as to subscriptions be voted upon as one question, and all voters of said Wayne county who favor the adoption of said propositions shall have written or printed on their ballots "For subscription," and all voters of said county of Wayne who oppose the adoption of said proposition shall have written or printed on their ballots "Against subscription."

And be it further enacted by the board of supervisors of said Wayne county, in the State of Illi-

nois, that at the special election heretofore ordered to be held, at the usual place of voting in the said county, on the 25th day of February, A. D. 1868, the following additional propositions shall be voted upon as an inducement or bonus toward building the Illinois Southeastern railway:

1. That the county of Wayne, in the State
76 of Illinois, shall donate the sum of one hundred thousand dollars to the Illinois Southeastern Railway Company.

2. That in payment of such donation bonds of the said county of Wayne be issued, made payable and delivered to the directors of the said railway company, and such bonds shall be in any sum not less than $100 each, in the discretion of the board of supervisors of said county of Wayne; such bonds to bear interest from the time of the completion of said Illinois Southeastern railway in running order through the said county of Wayne, at the rate of seven per cent. per annum, payable half-yearly, in the city of New York, on the first days of January and July of each year after said interest becomes due, the said bonds to be so drawn as to give the said county of Wayne the right to pay them or any of them at any time after ten years from the date of issuing the same, but reserving to the said county of Wayne the right of not being compelled to pay the principal of said bonds until the expiration of twenty years after the date of issuing the same: Provided, That the bonds so donated, issued, and delivered shall not mature nor become due and payable, nor any of the interest thereon or any part thereof become due or payable, nor shall any liability attach to said county of Wayne to pay said bonds or any part of them nor any of the interest upon them until said railway shall be completed within the whole limits of the line in said Wayne county and the cars running thereon, and each of the bonds so donated shall declare upon its face the conditions upon which it becomes due and payable.

3. That the faith of the said county of Wayne be pledged for the payment of the interest accruing upon said bonds according to the conditions of the same, and for the ultimate payment of the principal, and that a tax upon all the tax-
77 able property in said county of Wayne sufficient to pay the interest upon said bonds as it accrues be annually levied and collected for the payment of interest.

That all of said propositions for donation to said

Illinois Southeastern Railway Company be voted upon as one question, and all the voters of said county of Wayne who favor the adoption of said proposition shall have written or printed upon their ballots "For donation," and all voters of said county of Wayne who oppose the adoption of said proposition shall have written or printed upon ballots "Against donation;" which election shall be held in accordance with the laws governing the general elections in this State; which election will be opened at eight o'clock in the morning and will continue open until six o'clock in the afternoon of the same day.

That the line of said railway shall be located and run between the southwest corner of section fifteen, township one south, range seven east, and a point not more than one and one-half miles east of said southwest corner of said section fifteen, in said township and range.

It is hereby expressly agreed and understood that if the company or corporation who undertake to build said road should do enough work upon the same to entitle them to receive any of the said bonds of Wayne county they shall enter into an obligation with the board of supervisors of Wayne county binding themselves in a legal manner to complete the road through the entire length of Wayne county, ready for the cars and rolling stock, within six years from the date of the delivery of the first bonds of said county of Wayne to them, or on condition that if the road is not completed within said time that the road-bed, ties, bridges, culverts, rails, and all the material composing said road within the county of Wayne
78 shall be completely forfeited and become the sole and exclusive property of the said Wayne county, to be used by the said Wayne county thereafter as they, by said board of supervisors, shall think best. By order of the county court.

Your orators would further represent unto your honor that an election was had in pursuance of said order on the 25th day of February, A. D. 1868, and at said election all of said propositions were submitted as one proposition, as above set forth, received a majority of all the votes cast, but not a majority of the legal voters of the county, and was declared by the pretended board of supervisors so carried by the majority — votes so cast of the people of said county; that at the December term, 1868, of the said pretended board of super- Election.

visors of Wayne county the said Illinois Southeastern Railroad Company accepted formally the proposition of said Wayne county to so subscribe $100,000 to the capital stock of said railroad Co., and also the proposition to donate $100,000 to said company.

Your orators would further represent unto your honor that on the 24th day of February, A. D. 1869, *by* the Legislature of the State of Illinois passed an act entitled An act to amend an act entitled An act to incorporate the Illinois Southeastern Railroad Company; which act, among other things, provided that the Illinois Southeastern Railroad Company, in addition to the powers already conferred, shall have such other powers, rights, privileges, and immunities as are herein provided for, and all subscriptions to the capital stock or donations or gifts to said railway company, whether made by individuals, townships, counties, or corporations, shall be and are by this act legalized, and the said company is hereby empowered and authorized to collect and use the same upon the consideration as donated and subscribed. * * *

Amendatory act incorporating Ill. S. E. R. R., Feb. 24, 1869.

79 And the county courts or board of supervisors of said counties, respectively, may make and issue such bonds, payable to the directors of said company or bearer or otherwise, so as to make them negotiable by delivery, having such time to run and bearing such rate of interest, not exceeding ten per cent. per annum, payable annually or semi-annually, in or out of the State, as may be agreed upon by them and the said railroad company and conformable to the terms upon which said donations were or may be, respectively, voted for in said counties; the interest to be payable to bearer according to interest coupons attached to said bonds. Said act further provides that whenever said railroad company shall so demand the county courts or board of supervisors, as the case may be, of said counties, respectively, and the proper authorities of the several townships shall cause the bonds so provided for, with interest coupons attached, to be prepared and executed and placed in the hands of a trustee to be agreed upon by said county court or board of supervisors, who shall deliver said bonds to said railroad company or its assigns when and as the condition upon which said donations were respectively voted for shall be fulfilled, and the coupons for all interest past due at the time when

said company became entitled to the said bonds shall be detached and cancelled by said trustee and the interest for the current half year or year so arranged that said counties shall only pay interest on said bonds from the date at which said railroad company was entitled to receive the same. * * *

Whereas in section seven of the act to which this is an amendment it was provided that any bonds in payment of any donation made by counties to said railroad company that each of said bonds should declare upon its face the conditions upon which it should become due and where the election notice heretofore issued by the
80 proper authorities of any such counties making donations to said railroad company, as well as the act to which this is an amendment, contains certain conditions required to be performed by said railroad company before the bonds of such counties should become due and payable, and which conditions were by such notice, as well as by the act to which this is an amendment, required to be inserted in the face of such bonds to be issued by such counties:

Therefore be it further enacted that, upon a full and complete performance by said company of all the considerations upon which said bonds were to become binding obligations of the counties issuing the same, it shall be the duty of the county court or the board of supervisors, where such county is under township organization, of the respective counties making such donations to enter an order upon their records, at a regular or special term of their court, directing the clerk of such court to certify, over his official seal, upon the back of each of said bonds so issued, in language as follows, viz: "All of the conditions upon which this bond was to become a binding obligation of the county of Wayne have been complied with." That the holders of twenty thousand dollars or upwards of the bonds of any county or city issued in pursuance of this act or the act to which this is an amendment may at any time file the same with the auditor of public accounts for registration and for collection and payment of interest and principal, and all of the provisions of "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13th, 1865, so far as the same relates to registration, collection, and payment of interest according to the tenor of said

bonds, shall be in force and be applied for the benefit of all such bonds so registered; and whenever the proper county or city authorities
81 shall provide for payment of principal of such bonds the amount annually to be raised for that purpose shall be certified by the proper authorities of such county or city to the auditor of public accounts, and the provisions of said act shall apply to the collection and payment of the principal of said bonds as so provided by said county or city authorities. Nothing in this section shall be construed to change the rate of interest or payment of principal of said bonds as provided on their face, or in anywise to impair the rights of the holders of said bonds to collect either interest or principal in case of any default in payment of the same; which act was passed by the Legislature of the State of Illinois, was approved by the Governor thereof, and became a law on the 24th day of February, A. D. 1869.

Meeting of the pretended board of supervisors.

Your orators would further represent that at the June term, A. D. 1869, of the five pretended supervisors of the fifteen towns of Wayne county, styling itself the board of supervisors of Wayne county, the record showing present Daniel Wingate, chairman; Oliver Holmes, clerk; L. D. Bennett, sheriff; Copelin McKelvey, Miles H. Harris, J. B. Borah, L. M. Cisne, members of the board of supervisors.

Attest: OLIVER HOLMES, *Clerk.*

It was ordered that C. C. Boggs be appointed an agent to procure bonds for the use of Wayne county in making subscription and donations to said Illinois Southeastern Railway Company in the following form for the donation bonds, to wit:

Copy of bond for donation.

"Know all men by these presents that the County of Wayne and State of Illinois acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company or bearer in the sum of $1,000, which said sum the County of Wayne promises to pay at the —— Bank, in the city of New York, on the — day of
82 ——, 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July of each year, on the presentation and surrender of the annexed coupons. This bond is one of a series of bonds issued by Wayne county to aid

in the construction of the Illinois Southeastern railway, in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois entitled 'An act to incorporate the Illinois Southeastern Railway Company,' approved February 25th, 1867, and an act amendatory thereto, approved February 24th, 1869, and of an election of the legal voters of said Wayne county, Illinois, held on the 25th day of February, 1868, under the provisions of said act. This bond is not to become a binding obligation upon said county until the following condition is complied with, to wit: That said company shall have completed or caused to be completed the whole line of said road within the limits of said county, and the cars running upon the same; and for the payment of said sum of money and the accruing interest thereon in the manner aforesaid, upon the performance of said condition, the faith of the county is hereby irrevocably pledged."

And subscription bonds to said railway company in the following form, to wit:

Copy of bond for subscription to stock.

"Know all men by these presents that the County of Wayne, State of Illinois, acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company or bearer in — sum of —— dollars, which sum the said County of Wayne promises to pay at the —— Bank, in the city of New York, on the — day of ——, A. D. 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the
83 rate of seven per centum per annum, payable semi-annually, on the first day of January and July of each year, on the presentation and surrender of the annual coupons.

This bond is issued, under and pursuant to orders of the county court of Wayne county, for subscription to the capital stock of the Illinois Southeastern Railway Company, as authorized by the laws of the State of Illinois, and the faith of the County of Wayne is hereby firmly pledged for the payment of said principal and interest as aforesaid.

In testimony whereof the said County of
[L. S.] Wayne has executed this bond by causing the chairman of the board of supervisors to subscribe his name hereto and to be countersigned by the clerk of this court," &c.

Execution and delivery.

Your orator would further represent that the said pretended board of supervisors of Wayne county, on or about the 9th day of Sept., A. D. 1869, without any authority of law, made, executed, and delivered to Charles A. Beecher, vice-president of a company called the Springfield and Ill. Southeastern r'y, thirty-three thousand dollars of the bonds voted to the Illinois Southeastern Railway Company as aforesaid; that on or about the 19th day of November, A. D. 1869, the said board of supervisors made, executed, and delivered to said Charles A. Beecher, vice-president of the Springfield and Illinois Southeastern Railway Company, another thirty-three thousand six hundred dollars of the bonds voted by the voters of Wayne county to the Illinois Southeastern Railway Company, and on the 15th day of January, A. D. 1870, they again delivered thirty-three thousand four hundred dollars of said bonds to said vice-president of said Springfield and Illinois Southeastern Railway Company, making in all one hundred thousand dollars, being all of the subscription bonds voted to be subscribed to the said Illinois Southeastern Railway Company; and on the 6th day of May, A. D. 1870, the said board of supervisors made, executed,
84 and delivered to said vice-president or other officers of the Springfield and Illinois Southeastern Railway Company one hundred thousand dollars of the bonds voted to be donated to the Illinois Southeastern Railway Company, thus making in all two hundred thousand dollars of the bonds of said Wayne county donated and subscribed to said Illinois Southeastern Railway Company by the vote of the legal voters of said Wayne county and by the law under which said vote was had; that the same and all of the $200,000 of bonds were so delivered as donation bonds without subscribing or receiving any stock of said railroad Co.

Charges of invalidity.

Your orators would further represent unto your honor that the law under which the $100,000 of the donation bonds of Wayne county was pretended to be voted and issued provided that said bonds should only draw interest after maturity, and that they should not mature in less than ten years nor more than twenty, at the option of the board of supervisors who issued them; but your orators, in fact, say that the said pretended board of five supervisors did issue donation bonds and deliver them to the said Springfield & Illinois Southeastern Railway Company, drawing interest

from the date thereof, payable semi-annually from date, and that said bonds were dated January 1st, 1870, which issue of said bonds was without authority of law and void; also that the amendatory law, act to amend the charter of the Illinois Southeastern railway, dated February 28, 1869, is unconstitutional and void; that all of the acts and doings of the pretended board of supervisors was without authority of law.

All acts void.

1. There was no competent court to exercise the discretionary power of submitting any proposition to a vote under the act incorporating the Illinois Southeastern Railway Company or any general law.

2. That the propositions were in violation of the provisions of said act of incorporation; that the said act of February 25, 1867, entitled "An act to change the time of electing certain officers in a county therein named," was unconstitutional and in violation of the provisions of the constitution of 1848, article 7, section 6, as follows:

85

"The General Assembly shall provide by a general law for a township organization, under which any county may organize whenever a majority of the voters of such county at any general election shall so determine; and whenever any county adopts a township organization so much of this constitution as provides for the management of the fiscal concerns of the said county by the county court may be dispensed with, and the affairs of said county may be transacted in such manner as the General Assembly may provide;" and, in violation of article 3, section 23, says: "No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title."

And, in violation of article 9, section 5, says: "The corporate authorities of counties, townships, school districts, cities, towns, and villages may be vested with power to assess and collect taxes for corporate purposes."

3. That the title of the act did not express the subject-matter, and that the act did embrace more than one subject and was a local act, affecting Wayne county alone.

4. That no power could be conferred upon the five persons styled supervisors, pretending to act as the board of supervisors for the fifteen towns of said county of Wayne, as it was in violation of the provisions of the constitution of the State of Illinois,

as aforestated; that all of their acts as such board implying or conferring a discretionary power as a matter of law were null and void.

86 5. That the said board had no power to call a special election, as heretofore stated.

6. That it had no power to canvass the vote and declare an election had; that the said bonds so issued were null and void for want of power pretended to be executed by the five persons so styled supervisors.

7. That there was no general or special law whereby discretionary power vested or could be vested in the said five persons pretending to act as the board of supervisors to call a special election or to submit any proposition to the legal voters of said Wayne county to aid the construction of the Illinois Southeastern railway; that the act only authorized counties under township organization, with its duly authorized board of supervisors, to aid by donation to the amount not to exceed $100,000 by donation; that the submission of the several propositions to be voted on, and as one, was in violation of any authority of law.

No registration of voters was had.

Your orators would further represent that when the vote was taken to donate and subscribe aid to said railway no registration of the voters of the said Wayne county was had or taken, as required by law; that a majority of the voters did not vote; that at the general election prior to the said special election 3,122 votes were cast; that at the special election 1,531 votes were cast for the proposition and 801 against; that the said election was void and could confer no power to issue the aforesaid bonds.

Your orators would further represent unto your honor that the law of 1867, heretofore referred to, incorporating the Illinois Southeastern Railway Company, gave no power or authority to any county to make subscription to the capital stock thereof, nor was there any power, except to

87 county courts and duly organized boards of supervisors, under township organization; and, as the said railway company was organized and acted solely by authority of said special act and not under the general laws, your orators aver, as a matter of law, that they had no power nor authority of law for asking, receiving, or enforcing any subscription to said capital stock, nor was any authority or power given to said Wayne county for the said five persons called supervisors to make such subscription, by virtue of which said bonds

so issued by said pretended board of supervisors are null and void.

Your orators would further represent that they are tax-payers and owners of the following-described property, to wit:

Names of parties complainant.

William N. Borah, S. E. ¼, sec. 2, T. 2 S., R. 8 E.
Samuel Trotter, S. E. S. W., sec. 6, T. 1 S., R. 8 E.
A. F. Nesbit, lots 46 & 29, town of Mt. Erie.
Toliver Simpson, N. ½ S. E., sec. 12, T. 3 S., R. 8 E.
J. J. Davis, S. E. S. E., sec. 2, T. 1 S., R. 7 E.
W. B. Heidinger, S. W. S. W., sec. 6, T. 1 S., R. 9 E.
H. Tompkins is the owner of the S. ½ S. W., sec. 8, T. 1 N., R. 8 E.

All of which parties pay taxes each and every year, and each of said parties are [is] also the owners of a large amount of other real and personal property in said Wayne county, Illinois, and are [is] annually taxed to a large amount to pay taxes, a portion of which tax is applied semi-annually to pay interest on said bonds so issued without authority of law by the pretended board of supervisors of Wayne county, Illinois; and that the auditor of the State of Illinois is about to order a levy, or has ordered a levy, of a tax of 48 cents per $100 to pay the interest on said bonds in violation of law and of the rights of your orators; that a levy of taxes is now about to be ordered and a levy about to be assessed against the property above described and the other taxable property of
88 your orders [orators] and the other citizens and tax-payer-of Wayne county for the year 1885, and now is about to be collected against said taxable property, with which to pay interest upon said bonds; that if not prevented in some way that the authorities of said State of Illinois will proceed to collect a tax upon said taxable property to pay said interest and eventually the principal of the bonds of the said Wayne county issued to said railway company as aforesaid; that the present holders of the bonds and coupons issued by said Wayne county are all unknown to your orators, although they have made diligent search and inquiry therefor; that they are informed and believe that said bonds were sold and transferred by the said railway company to different persons, and that the same are now scattered far and wide over the country, in the hands of divers persons, all unknown to your orators.

Your orators would further represent that the

tax to pay said interest and the principal of said bonds is collected by the township and county collectors of Wayne county, and by said township collectors paid into the hands of the said county collector, who pays the same over to the State treasurer, who pays the same to the holders of the bonds of said Wayne county; that the tax to pay the same is about to be ordered levied by the auditor of the State of Illinois, who directs the county clerk to levy the same upon all the taxable property in said Wayne county.

Your orators would therefore pray that Joseph E. Wilson, as county clerk; Oliver P. Patterson, as county treasurer of the county of Wayne and State of Illinois; C. P. Sweigert, as auditor of the State of Illinois; Jacob Gross, treasurer of the State of Illinois, or their successors in office, and the unknown owners and holders of the bonds and coupons issued by the county of Wayne and State of Illinois to the Illinois Southeastern Rail-
89 way Company, dated in 1869 and 1870, be made parties defendant to this bill of complaint; that a summons may issue ordering and requiring them and each of them to appear on the first day of the next term of the circuit court of Wayne county, Illinois, and true and specific answers make to each allegation of the complainants' bill of complaint, but not under oath, their answers under oath being specially waived, and that upon a final hearing of this case that your honor will order, adjudge, and decree that the said bonds purporting to be issued by Wayne county, Illinois, to the Illinois Southeastern Railway Company for subscription and donation to said railway company be declared to be null and void and of no effect as liabilities of said county; that said defendants be ordered and directed to bring into court all of said bonds and the coupons thereunto belonging, and that the same be cancelled by the clerk of this court and destroyed; that your honors will grant a perpetual injunction against all of said defendants, forever enjoining and restraining them from computing, extending, levying, or collecting, or attempting to compute, extend, levy, or collect, any tax for the purpose of paying or attempting to pay any of the principal or interest on any of the bonds or coupons issued by Wayne county to the Illinois Southeastern Railway Company or bearer and bearing date in the years 1869 and 1870, for either donation or subscription to said railway company; "that

Amendment.

the money now in the hands of the collector of the county of Wayne or in the hands of the State treasurer be held by them respectfully [respectively] until the further order of this court;" and that your honors will grant such other and further relief in the premises as to equity and good conscience may belong.

Your orators will ever pray, etc.

WM. N. BORAH,
SAMUEL TROTTER,
A. F. NESBIT,
TOLIVER SIMPSON,
90 H. HARRIS,
W. B. HEIDINGER, AND
H. TOMPKINS,
Per BELL & GREEN AND
H. TOMPKINS,
Their Attorneys.

STATE OF ILLINOIS, } ss:
Wabash County, }

H. Tompkins, being duly sworn, on oath states that he is one of the complainants in the above bill named; that he has heard said bill read and knows the contents thereof, and that the matters and things therein stated are true in substance and in fact; that the rights of complainants will be unduly prejudiced unless an injunction issue at once, and without notice, to the defendants, for the reason that the county clerk of Wayne county is about to extend the taxes sought to be enjoined, and will do so before notice can be given and a writ of injunction obtained.

H. TOMPKINS.

Subscribed and sworn to this 25th day of Nov. 1885, before me—

J. T. BURKETT, *Clerk.*

AT CHAMBERS, *November 20th*, 1885.

Let an injunction issue as prayed for in the foregoing bill, upon complainants entering into a good and sufficient bond in the sum of $25,000, to be approved by the clerk.

WILLIAM C. JONES, *Judge.*

To clerk of circuit court, Wayne Co., Illinois.

H. TOMPKINS, BELL & GREEN,
Complainants' Solicitors.

(Endorsed:) Filed July 24th, 1886. J. A. Jones, clerk.

91 And afterwards, to wit, on the 9th day of June, A. D. 1886, came John Ware, by his solicitor, and filed in said clerk's office his answer to the bill of complaint in this cause; which said answer is in the words and figures following, to wit:

In the United States Circuit Court, Southern District of Illinois.
June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOSEPH E. WILSON, County Clerk, *et al.* } Bill in Chancery.

The separate answer of John Ware to said bill.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says—

That he admits the execution and delivery by said Wayne county of the bonds mentioned in said bill, and says that after such
92 execution and delivery and after their registration by the auditor of public accounts of the State of Illinois in pursuance of the laws of said State the owner thereof, viz., the said railroad company, to which they were issued in payment of subscription or as donations by said county in pursuance of the laws of said State and the vote of the people of said county, as authorized by said law, negotiated, sold, and delivered the same to divers innocent purchasers thereof, among whom was this defendant, who bought the same in good faith, before they were due, in the usual course of business, for valuable consideration, viz., the face amount thereof, without notice of any real or supposed defense thereto, relying upon the recitals in said bonds, the vote of said people for their issue, and the laws of the State of Illinois authorizing their issue—especially the charter of said railroad company, approved February 25th, 1867—as contained in the Private Laws of the State of Illinois for that year, vol. 2, page 750, &c., and an act amendatory thereof, approved February 24th, 1869, as found in said Private Laws for 1869, vol.
93 3, page 308, &c., and the public law of said State of 1849 concerning subscriptions, &c., and other public and private laws thereof concerning such matter. This defendant still owns his said bonds and the coupons for the unpaid interest thereon, upon which the interest has been voluntarily paid by said county for a series of years, the principal of said bonds amounting to a large sum, to wit, the sum of ten thousand dollars, paid as aforesaid by this defendant for his said bonds, some of them subscription bonds and some donation bonds.

This defendant therefore says that none of the matters and things in said bill alleged, even if they be true, as therein alleged, which he neither admits nor denies, but calls for proof thereof, ought, so far as herein expressly admitted, — give said complainant- any right to

question the validity of said bonds in the hands of innocent holders thereof, as aforesaid, or to maintain their said bill to have them declared invalid, or to enjoin any tax on the people of said county for the payment of the same or of matured interest thereon, as sought in said complainants' bill; that no question concerning the
94 organization of said Wayne county, or to the competency of its board of supervisors to do county business, or concerning the formal regularity of said board, submission of the question of the issue of said bonds to the vote of the people of said county, or to the manner in which its power was derived, or as to registration of votes at such election, or as to whether the voters voting for the same were an actual majority of all the voters in the county that might have voted at such election, or any other of the questions sought to be raised in said bill can be so raised or averred; or, if proven as therein averred, would have no effect whatever on the validity of said bonds of defendant or give any reason for enjoining the whole tax to pay the same, or interest thereon, on the people of said county, none of whom are complaining or desiring to have any such question raised, except the six complainants in said bill. And now, having fully answered said bill, this defendant prays that it be dismissed by the court at said complainants' costs.

JOHN WARE,
By BAILEY AND SEDGWICK AND
GEORGE M. BRINKERHOFF,
Solicitors.

(Endorsed:) Filed June 9th, 1886. J. A. Jones, clerk.

95 And afterwards, to wit, on July 8th, A. D. 1886, came John Ware, by his solicitors, and filed in said clerk's office his answer to the amended bill of complaint of complainant in this cause; which said answer is in the words and figures following, to wit:

In the United States Circuit Court, Southern District of Illinois, *ss.*
June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOSEPH E. WILSON, Co. Cl'k, *et al.*
} Bill in Chancery for Injunction and Relief.

The answer of John Ware, one of said defendants, to the amended bill of complaint.

The defendant answers to said amended bill the same as he has heretofore answered to the original bill of complaint herein, and, for answer to the new allegation in said amended bill, wherein said complainants strikes out their former allegation "that the five persons so elected under the said act" of February 25th, 1867, and insert in lieu thereof "that the five persons under the said act assumed

their office as district supervisors at the June term, 1867,
96 without any order or notice of a change in the government in the fiscal affairs of the county of Wayne and without there being any record in the records of Wayne county of a call for an election or of an election or of their being elected, and retained the same until June, 1872; that by a general expression and demand of the people in opposition to the usurpation of the fiscal offices of the county by the said five persons the Legislature did, on the 12 of April, 1871, repeal the said act creating said district supervisors and enacted that act reducing township organizations into an act to be re-enacted; that during their said usurpation the said district supervisors under the said act did," &c., being the only charge in said bill, this defendant says that, as he is informed and believes, it is not true in manner and form as in said amendment alleged; that the taking charge of the fiscal affairs and government of said county by said supervisors was no usurpation; that they were during said time, they and their successors in office, the *de facto* government of said county and did all its business as such; that the inhabitants and voters of said county often recognized said supervisors as such and always treated them as such by their elections and other acts
97 under and in conformity to said act of February 25th, 1867, during said time that it was in force; that they were the real and only board of supervisors of said county, and their acts as such are binding on said county, so far as third and innocent persons dealing with said county obligations, like this defendant, are concerned, at least; that it is too late now for the five complainants in this bill to attempt to set aside in this collateral manner all the acts and doings of the board of supervisors of said Wayne county from June, 1867, to June, 1872, when they permitted their doings all that time without *quo warranto* to exercise such acts and duties; that they cannot now take the benefits of the acts of such supervisors and not be subject to the disadvantages thereof; that whether or not the records of Wayne county now show that the first set of district supervisors in 1867 were elected cannot effect the rights of this defendant in the premises any more than whether the assumed office with or without an order or notice of change of government. The people of said county, having acquiesced so long in the actings and doings of said supervisors as such, cannot now, as this defendant is informed and believes, attack rights like those of this
98 defendant, acquired under said actings and doings, by attempting to show that such officers were not officers *de jure*. They are estopped to make or prove any such allegations as against this defendant and those in like case. Wherefore your defendant prays as in his answer to said original bill.

BAILEY AND SEDGWICK,
Sol's for D'f't, John Ware.

(Endorsed:) Filed July 8th, 1886. J. A. Jones, clerk.

And afterwards, to wit, on July 30, 1886, came William Bean, John A. Waterman, William B. Skinner, O. F. Page (treas. Bidde-

ford Savings Bank), Andrew Potter, and John A. Peters, by their solicitors, and file- in said clerk's office their petition to be made parties defendant in this cause; which said petition is in the words and figures following, viz:

UNITED STATES OF AMERICA:

In the Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOS. E. WILSON, Co. Clerk of Wayne County, *et al.* } Bill in Chancery.

99 Your petitioners, the undersigned, would respectfully represent unto your honor that they have been informed and believe that the above-entitled bill in chancery has been filed, in which it is prayed that the $200,000 of bonds issued by the said county, dated September 9 & 19th, 1869 & 1870, and May 1st, 1870, and due July 1st, 1889, and January, 1890, and bearing interest at the rate of 7%, payable semi-annually on the first days of January and July of each year, be cancelled and held as null and void, and that an injunction has been issued enjoining the further levy, collection, or payment of taxes to pay either interest or principal of said bonds, and that said injunction be made perpetual.

That in support of their interest in the above issue of bonds, and to the end that they may be made parties defendant to said bill, with leave to plead, answer, or demur to the same through their attorneys, Sanders and Haynes, they respectfully represent that they are the owners and holders at the present time and were the owners and holders of the following bonds of said issue of $200,000 of Wayne Co., Ills., long before the commencement of the said bill in chancery, purchased by them respectively, in the usual
100 course of commercial business, for a valuable consideration paid therefor and before due, and *and* without any notice whatever of any alleged want of power or irregularity in the issue of said bonds, to wit:

William Bean, a citizen of the State of Maine, holds bonds Nos. 19, 30, 96, 98, & 99, date- as aforesaid, for $1,000 each; in all, $5,009 and accrued interest.

William B. Skinner, a citizen of the State of New York, holds bond No. 72 for $1,000 and accrued interest.

John A. Waterman, a citizen of the State of Maine, holds bond No. 23 for $1,000 and accrued interest; bonds Nos. 84 & 98 for $500 each and accrued interest; bonds Nos. 153, 56, 215, 232, 384, 385, and 396 for $100 each and accrued interest—$2,700 and interest.

O. F. Page, treas. of Biddeford Savings Bank, a citizen of the State of Maine, holds bonds Nos. 67, 73, 74, 75, 84, and 89 for $1,000 each—in all, $6,000—and interest.

Andrew Potter, a citizen of the State of Vermont, holds bonds Nos. 58, 25, 64, 22, 88, 85, 77, 68, 70, and 65, each for $1,000 and accrued interest; bonds Nos. 85, 78, 77, and 100 for $500 each and interest; bonds 334, 126, 264, 74, 76, 144, 154, 156, 140, 142, 400,

361, 357, 129, 128, 263, 53, 72, 157, 158, 155, 130, 81, 367, 358, 356, 354, 323, 10, 362, 353, 340, 335, 196, 369, 381, 387, 386, 45, 326, 316, 11, 355, 345, 331, 195, 242, 188, 382, 392, 127—51 bonds for
101 $100 each and accrued interest; in all, $17,100 of bonds and accrued interest.

John A. Peters, a citizen of the State of Maine, holds bonds Nos. — for $1,000 each; in all, $5,000, and accrued interest.

That petitioners have been informed and believe that the parties in interest in said bill are all citizens of the State of Illinois, and that all the petitioners are citizens of other States of the United States, and that the only question to be determined in said bill arise under the Law Merchant, and are Federal questions, and therefore ask, what they are informed and believe to be their rights as citizens of other States, that they be made parties defendant to said bill, with the usual powers and privileges allowed by law to such parties defendant in such cases.

WILLIAM BEAN,
WILLIAM B. SKINNER,
JOHN A. WATERMAN,
O. F. PAGE,
Treas. Biddeford Savings Bank;
ANDREW POTTER,
JOHN A. PETERS,
Petitioners,
By their atty's, SANDERS AND HAYNES.

Total interest of petitioners, $39,376.

(Endorsed:) Filed July 30th, 1886. J. A. Jones, clerk.

102 And afterwards, to wit, on Friday, July 30th, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

WILLIAM N. BORAH *et al.*
vs.
JOSEPH E. WILSON, Co. Clerk of Wayne County, *et al.*

And now, by their attorneys, Sanders and Haynes, comes the petitioners, Andrew Potter, O. F. Page, t'r Biddeford Savings Bank; John A. Waterman, Wm. B. Skinner, Wm. Bean, and John A. Peters, representing to the satisfaction of this honorable court that they are the owners and holders of some $39,000 of the bonds of Wayne county, Ills., whose validity is contested in said above-entitled bill in chancery, and praying to be made parties defendant to said bill and to be allowed to plead, answer, or demur, as the law allows; and the court having fully considered their petition, it is hereby ordered that the prayer of the petitioners be granted, and the said petitioners be entered of record as parties defendant to said bill in chancery, with leave granted to their attorneys, Sanders and

Haynes, to enter their appearance, and to plead, answer, or demur to said bill within a reasonable time from the date hereof.

103 And afterwards, to wit, on the 7 day of August, A. D. 1886, came the above-named petitioners, by their solicitors, and filed in said clerk's office their answer to the original and amended bills in this cause; which said answer and copy of bond and Exhibits A, B, & C are in the words and figures following, to wit:

United States of America, Southern District of Illinois. In Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
J. E. WILSON, Co. Clerk, *et al.* } Bill in Chancery.

The answer of O. F. Page, treas. Biddeford Savings Bank; Andrew Potter, Jno. A. Waterman, William B. Skinner, Wm. Bean, and John A. Peters, parties defendants to the bills of complaint of William N. Borah *et al.*

The above-named parties, having been made, on their petition filed in this honorable court and by order of this honorable court, parties defendant to said bill in chancery, with leave to plead, answer, or demur as the law allows, herewith make answer to the several allegations of said bill, and, inasmuch as all of said defendants have a common interest in said bill of complaint, ask this
104 honorable court that the following answer be taken as the seperate answer of each of said defendants, it being applicable to each, as far as questions of law are involved, the only difference being in the amount involved, as represented by each, as will more fully appear in the following answer:

These defendants, reserving unto themselves all rights of exceptions to said bill of complaint, for answer thereto say that they are the owners and holders of bonds mentioned in said bill of complaint as subscription and donation bonds—a part of one issue of donation bonds, dated May 6th, 1870, and due January 1st, 1890, of $100,000, and of an issue of subscription bonds, dated September 9 & 19th, 1869, and due January 1st, 1890, all bearing interest at the rate of 7 %, payable in New York city, on the first days of January and July of each year—of the county of Wayne and State of Illinois, and that they became the owners and holders thereof by purchase in good faith, in the usual course of their commercial business, for a good and valuable consideration paid therefor long before the filing of said bill of complaint, relying upon the laws of the State of Illinois then in fore and upon the bonds themselves and the endorsements thereon, and with no notice whatever or knowledge
105 of any claimed want of power or irregularity or illegality in the voting for or issuing of said bonds; but, on the contrary, they were informed and believed, and still believe, that said bonds were duly issued by said county of Wayne, State of Illinois, in strict conformity to the provisions and requirements of the statutes and

laws and the constitution of the State of Illinois, to wit: O. F. Page, treas. Biddeford Savings Bank, bonds Nos. 67, 73, 74, 75, 84, and 89, for $1,000 each; in all, $6,000, and accrued interest; Andrew Potter, bonds Nos. 234, 126, 264, 74, 76, 144, 154, 156, 140, 142, 400, 361, 357, 129, 128, 263, 53, 72, 157, 158, 155, 130, 81, 367, 358, 356, 354, 323, 10, 362, 353, 340, 335, 196, 369, 381, 387, 386, 45, 326, 316, 11, 355, 345, 331, 195, 242, 188, 382, 392, 127, for $100 each; in all of them, $51,000; also bonds Nos. 85, 78, 77, & 100, for $500 each; in all of them, $2,000; also bonds Nos. 58, 25, 64, 22, 88, 85, 77, 68, 70, & 65, for $1,000, $10,000; John A. Waterman, bonds Nos. 23, for $1,000, $1,000; also Nos. 98 & 84, for $500 each, $1,000; also Nos. 384, 385, 56, 215, 232, 396, & 153, for $100 each, $700; William B. Skinner, bond No. 72, for $1,000; William Bean, bonds Nos. 19, 30, 96, 98, and 99, for $1,000 each; in all, $5,000; John A. Peters, bonds Nos. —, for $1,000 each; in all of them, $5,000, and accrued interest thereon; and defendants show unto the court a copy of each of said
106 donations and subscription bonds, all the others being of like tenor and effect, save as to numbers of bonds and the amounts of each, and marked Exhibits "A" and "B" of this answer, and ask that the same may be taken as a part hereof.

And defendants aver that all the complainants in interest in said bill of complaint are citizens of the State of Illinois; that the only question involved in said bill is the validity of said bonds and interest, and that all of these defendants are residents and citizens of States of the United States other than the State of Illinois, to wit: O. F. Page, treas., etc., is a citizen of the State of Maine; Andrew Potter, of the State of Vermont; John A. Waterman, of the State of Maine; William B. Skinner, of the State of New York; William Bean, of the State of Maine, and John A. Peters of the State of Maine.

And these defendants, further answering, say that it is recited in each of said donation bonds as follows, to wit: "This bond is one of a series of bonds issued by Wayne county to aid in the construction of the Illinois Southeastern railway, in pursuance of the authority conferred by an act of the General Assembly of the
107 State of Illinois, entitled 'An act to incorporate the Illinois Southeastern Railway Company,' approved February 25th, 1867, and an act amendatory thereto, approved February 25th, 1869, and of an election of the legal voters of said Wayne county, Illinois, held on the 25th day of February, 1868, under the provisions of said act."

And said subscription bonds recite as follows, to wit:

"This bond is issued, under and pursuant to orders of the county court of Wayne county, for subscription to the capital stock of the Illinois Southeastern Railway Company, as authorized by the laws of the State of Illinois; and the faith of the county of Wayne is hereby firmly pledged for the payment of said principal and interest as aforesaid."

And the defendants, further answering, say that they believe it to be true, as alleged in said bill, that an election of the voters of the county of Wayne was called by the county board of said county of

Wayne, to be held at the usual places of voting in said county, as a special election, on the 25th day of February, A. D. 1868, to vote on the propositions submitted of subscribing $100,000 to the stock of the Illinois Southeastern Railway Co. and to donate $100,000 to aid in the construction of said railroad, to be paid in bonds issued
108 by said county of Wayne, as stated in the propositions submitted to said voters, and that, as averred in said bill, defendants believe to be true that 1,531 votes were cast for the propositions submitted and 801 against them; but distinctly deny that it is material to the issues in this case or that the laws under which said election was held demanded that a majority of all voters should be given in favor of the propositions submitted, nor that for an election for such purpose there should be a registration of votes.

These defendants, further answering, say that the averments in said bill as to the execution of said $200,000 of donation and subscription bonds and the delivery of the same to the officials of the said railway Co. as the work were [was] completed may or may not be true. Defendants, not being advised as to the truth of these allegations, neither admit nor deny them, but aver that after said bonds came into their possession as aforesaid, and as they have been advised and believe, the said county of Wayne has ever since their issue voluntarily paid all the interest accruing thereon, according to the tenor and effect thereof, as it matured.

109 And defendants, further answering, say that they believe it to be true, as stated in said bill, that the State of Illinois did, on or about the 25th day of February, 1867, pass an act entitled "An act to incorporate the Illinois Southeastern Railway Company," and that it was duly approved by the then Governor of the State of Illinois; that the act thereupon became and was in full force and effect; that under and by virtue of said legislative act certain persons therein named became a body corporate under the name and style of the "Illinois Southeastern Railway Company," with full power to build and construct the railroad mentioned in said bill; and these defendants, believing that some portions of said act are fully set forth in said bill while others are not, and that said legislative act, as found on pages 750, 751, 752, 753 & 754, and 755 of volume 2 of the Private Laws of the State of Illinois for 1867 —, — be taken and considered as part of defendants' answer.

And defendants, answering further, say they believe it to be true, as set forth in said bill, that, in the year of 1869, the Legislature of the State of Illinois did pass an act, which was duly approved by the then Governor of the State of Illinois on the 25th day of Feb-
110 ruary, A. D. 1869, entitled "An act to amend an act to incorporate the Illinois Southeastern Railway Company," which amendatory act as [is] found on pages 308 to 316 of volume 3 of the Private Laws of the State of Illinois for 1869, which defendants ask may be taken as part of this their answer.

And defendants, further answering, deny all and every allegation in said bill whereby it is averred that the said last above legislative acts or either of them were unconstitutional, and that the said bonds were not issued and made in strict pursuance of the provisions of

said legislative enactments, and refer to the endorsements on said bonds, as shown by Exhibits "A" and "B," hereto attached and made part of this answer, wherein the county clerk of Wayne county certifies, under the seal of the county, "that the county court of said county have entered an order on the records of said county directing me to endorse upon this bond the following words, to wit: 'All the conditions upon which this bond was to become a binding obligation of the county of Wayne have been complied with.'"

And defendants, further answering the averments of said
111 bill as to the act of the Legislature of the State of Illinois, passed on the 28th day of February, A. D. 1867, and duly approved by the then Governor of Illinois, and by its terms in force and effect from and after its passage, and therein declared to be a public law of the State of Illinois, as to its being in conflict with the constitution of the State of Illinois, that of 1848, then in force, and as to its title or caption and the claimed "assumption of power" of the officials of Wayne county, acting under its provisions; but, on the contrary, aver that the said last-named act of the Legislature was in accord with the constitution of the State of Illinois in force at that time in reference to its title or caption, and also in reference to the laws of Illinois in regard to township organizations and county boards, and that the alleged "assumed" acts of the county board were in full and strict accord with the provisions of the acts of the Legislature and the constitution of the State of Illinois with reference to the election and the orders of said board, and the issuing of the bonds now in question by the county of Wayne; that said county was duly organized, having the proper officers under the laws and statutes *of the laws* of the State of Illinois at the time
112 of the vote for and the issuing and delivering of the said bonds and for a long time prior — and thereafter; and that the said county of Wayne was at said time when said bonds were issued duly conducting and transacting its affairs and business as a county properly organized under the township laws of the State of Illinois, and its officials were not only acting as *de facto* but *de jure* officers of the county of Wayne, and as such their acts are binding upon the county of Wayne.

And defendants, further answering, say that it is true, as alleged in said bill of complaint, that said bonds have coupons attached thereto representing six months' interest on said bonds, due and payable on the first days of January and July of each year, in accordance with the terms of the laws under which they — issued and the vote of the voters, as above stated, and that the said bonds were properly registered in the office of the auditor of the State of Illinois, under and in pursuance of the statutes of said State, as will more fully appear by reference to a certified copy of the certificate of registration of the State auditor of Illinois, hereto attached
113 and marked Exhibit "C" and made a part of this answer, showing still further by the sworn certificate of — a full compliance with all the laws of the State and the conditions imposed upon the railroad company by the vote of the voters of the county of Wayne in the issue of these bonds; and the said auditor, in dis-

charging his duties as enjoined by said statute, in directing and requiring the proper officers of the county to levy and collect upon and from the taxable property of said county a tax to pay and satisfy the interest accruing upon said bonds, was only acting under the laws of the State in discharging a duty placed upon the officials of said Wayne county when he & they procured the registration of said bonds.

And defendants, further answering, say that they deny that complainants are entitled to the relief, or any part thereof, in said bill demanded, and defendants here deny all and every allegation in said bill contained and not herein mentioned or replied unto; and defendants, having fully answered the original and amended
114 bill of complaint, ask this honorable court to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

O. F. PAGE, *Treas., etc.*,
ANDREW POTTER,
JOHN A. WATERMAN,
WILLIAM B. SKINNER,
WILLIAM BEAN, AND
JOHN A. PETERS,
By SANDERS AND HAYNES,
Their Solicitors.

EXHIBIT "A."

No. 67. UNITED STATES OF AMERICA. $1,000.

State of [Vignette.] *Illinois.*

Wayne County Railroad Bond.

Registered by the auditor of public accounts of the State of Illinois. Principal and interest collected and paid by the treasurer of the State of Illinois.

Know all men by these presents that the County of Wayne and State of Illinois acknowledges itself to owe and be indebted to the Illinois Southeastern Railroad Company or bearer in the sum of one thousand dollars, which sum the said county of Wayne promises to pay, at the American Exchange National Bank, in the city of New York, on the 1st day of January, A. D. 1890, the said county reserving the right to pay this bond at any time after ten
115 years from the date of its issue, with interest at the rate of 7 % (per cent.), payable semi-annually, on the 1st days of July and January of each year, on the presentation and surrender of the annexed coupons.

This bond is one of a series of bonds issued by Wayne county to aid in the construction of the Illinois Southeastern railway in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th,

1867, and an act amendatory thereof, approved February 24th, 1869, and of an election of the legal voters of Wayne county, Illinois, held on the 25th day of February, 1868, under the provisions of said act.

This bond is not to become a binding obligation on the said county of Wayne until the following conditions is [are] complied with, to wit, that said company shall have completed or caused to be completed the whole line of said road within the limits of Wayne county, and the cars — be running upon the same; and for the payment of said sum of money and the interest accruing thereon, in the manner aforesaid, upon the performance of said con-
116 dition, the faith of the County of Wayne is hereby irrevocably pledged.

In testimony whereof the said County of Wayne has executed this bond by causing the chairman of the board of supervisors to subscribe his name hereunto, and to be countersigned by the clerk of this court *and* affixing the seal of said court; all of which is done by and under orders of the board of supervisors of Wayne county, at Fairfield, this 6th day of May, A. D. 1870.

DANIEL WINGATE,
Chairman of Board of Supervisors.

Countersigned by—

[Seal Wayne Co. Court, Ills.]

OLIVER HOLMES,
Clerk of County Court.

Said bond contains the following endorsements:

No. —. Wayne county bond. $1,000. 7%. Principal payable July 1, 1890, at American Exchange National Bank, New York. Interest payable 1st January and July.

Also section 7 of the act to incorporate the railway company in full.

Also sections 3, 12, & 13 of An act to amend an act to incorporate the railway company.

117 EXHIBIT "B."

STATE OF ILLINOIS, } ss:
Wayne County, }

I, Oliver Holmes, clerk of the county court of Wayne county, State of Illinois, do hereby certify that the county court of said county have entered an order on the records of said county court directing me to endorse upon this bond the following words, to wit: All the conditions upon which this bond is to become a binding obligation of Wayne county have been complied with.

In testimony whereof I hereto affix my hand and the seal of said court, at Fairfield, this 6th day of May, A. D. 1870.

[SEAL.] OLIVER HOLMES, *Clerk.*

EXHIBIT "C."

STATE OF ILLINOIS, AUDITOR'S OFFICE,
SPRINGFIELD, *May 9th*, 1870.

I, Chas. E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to amend an act entitled 'An act to incorporate the Illinois Southeastern Railway Company,' approved February 14th,
118 1869," as well as the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

(Endorsed:) Filed August 7th, 1886. J. A. Jones, clerk.

And afterwards, to wit, on August 14th, A. D. 1886, came A. T. Post and the Society for Savings, by Messrs. Connolly and Mather, their solicitors, and filed in said clerk's office their petitions to be made parties in this cause; which said petitions are in the words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss:*
Southern District of Illinois, }

In the Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs. } In Chancery.
JOS. E. WILSON, Co. Clerk, *et al.*

To the Hon. Samuel H. Treat, judge of said court, in chancery sitting:

119 Your petitioner, Augustus T. Post, who is a citizen of the State of New York, respectfully represents unto your honor that he is the owner and holder of certain of the Wayne county, Illinois, bonds and their coupons, as described and set forth in the bill of complaint filed in the above-entitled cause, viz., bonds Nos. 1 to 46, both inclusive, of the subscription issue for $500 each, dated September 9th, 1869, and Nos. 287, 291, 296, 402, 403, 404, 405, 406, 407, 408, 411, 412, 414, 415, 418, 420, 423, 427, 428, 429, 430, 431, 435, 436, 437, 438, 440, 441, 443, 445, 444, 446, 463, 464, 465, 466, 473, 474, 476, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, dated January 20th, 1870, for one hundred dollars each, and Nos. 5, 6, 7, 8, 89, 91, 92, 93, 94, 95, dated of Nov. 16th, 1869, and Nos. 32, 33, 51, 52, 73, 83, 84, 85, dated Nov. 19, 1869, for $100 each, all of the subscription issue, and Nos. 11, 12, 13, 20, and

56, of $1,000 each, and dated May 6th, 1870, and of the donation issue of said bonds; that petitioner is made a party to said bill by the designation of unknown owners and holders of said bonds and their coupons.

Petitioner avers that he is a necessary and proper party to said bill; that his interest in the subject-matter of said litigation amounts to more than five hundred dollars exclusive of costs, and he
120 re-ctfully asks leave to be made a party defendant to said bill by proper name, and for leave to answer the same.

AUGUSTUS T. POST,
By CONNOLLY AND MATHER,
His Att'ys.

UNITED STATES OF AMERICA, }
Southern District of Illinois, } *ss:*

In the Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOE E. WILSON, Co. Cl'k, *et al.* } In Chancery.

To the Hon. Samuel H. Treat, judge of said court, in chancery sitting:

Your petitioner, The Society for Savings, a citizen of the State of Ohio, respectfully represents unto your honor that he is now and for a long space of time last past has been the owner and holder of certain bonds and their interest coupons of Wayne county, Illinois, issued by said county in aid of the construction of the Illinois Southeastern railway, viz., bond No. 92, of the issue of November 19th, 1869, for $500, and Nos. 1 to 10, both inclusive, of the issue of May 6th, 1870, for $1,000 each, together with the interest coupons of said bonds, due July 1st, 1886, aggregating the sum of three hun-
121 dred sixty seven $\frac{50}{100}$ dollars, as also all subsequently accruing coupons, not yet due, belonging to said bond.

Petitioner further avers that the bill filed in said above-entitled cause aims to have said petitioner's said bonds and coupons decreed null and void, and to have the levy of the taxes by the proper officials for their payment forever enjoined by a final decree to be rendered in said cause; that the bill filed therein makes the unknown owners and holders of the bonds and coupons issued by the county of Wayne and State of Illinois to the Illinois Southeastern Railway Company, dated in 1869 and 1870, defendants by the general designation of "unknown owners and holders." Wherefore and by reason of the premises petitioner avers that it — a necessary and proper party to said bill, and would therefore ask to be made a defendant by proper name and of record in said cause, and for leave to answer said bill and to be heard on final hearing of said cause; and, as in duty bound, it will ever pray, &c.

THE SOCIETY FOR SAVINGS,
By CONNOLLY AND MATHER,
Its Solicitors.

(Endorsed:) Filed August 14, 1886. J. A. Jones, clerk.

122 And afterwards, to wit, on Saturday, the 14th day of August, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

WILLIAM N. BORAH *et al.*
vs.
JOSEPH E. WILSON *et al.*
} In Chancery.

This day comes the Society for Savings and Augustus T. Post, by Messrs. Connolly and Mather, their solicitors, and present their petitions asking to be made defendants by name and of record herein and for leave to file answer; and the court, being sufficiently advised, doth grant the prayer of said petitioners. and said answers are accordingly filed.

123 And afterwards, to wit, on the 14th day of August, A. D. 1886, came the Society for Savings and Augustus T. Post, by their solicitors, Messrs. Connolly and Mather, and filed in said clerk's office their respective answers to the bill of complaint in this cause; which said answers are, respectively, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

In Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOE E. WILSON, County Clerk, *et al.*
} Bill in Equity for Injunction.

The seperate answer for [of] The Society for Savings, one of the defendants, to the bill of complaint herein filed.

This defendant, saving and reserving unto itself all and all manner of exception to the manifold uncertainties and imperfections of said bill, for answer to so much and such parts thereof as it is advised it is material or necessary for it to answer, answering, says it does not know, except by the statements of said bill, whether
124 or no complainants are owners of real estate and tax-payers in Wayne county, Illinois, and therefore neither admits nor deny-s the same, but asks for proof; admits that the county of Wayne adopted township organization as the mode of government for said county and entered upon the same at the June term, 1860; admits that the county court did appoint commissioners, who proceeded to divide said county into 15 towns, as shown by the report set out in said bill; admits that the management of the fiscal concerns of the county, as adopted, has never been changed, as averred in said bill, and that the division of the county into towns, as made, &c., has remained the same to this date.

Respondent does not know nor has it any information or belief other than as alleged in said bill whether or no said Illinois South-

eastern R. R. Co. did duly organize under said act of Feb. 25th, 1867, and become a body corporate, but without any stock subscription being paid or assessed, and therefore neither admits nor denies the same, but asks for proof.

Further answering, respondent says it has no knowledge, information, or belief that five persons claiming to be the board of supervisors of said county of Wayne, claiming to represent the
125 fifteen towns of said county, and claiming to act under the act of the Legislature of Illinois approved by the Governor Feb'y 28th, 1867, assumed their office as district supervisors at the June term, 1867, without any order or notice of a change in the government of the fiscal affairs of the county of Wayne, and without there being any record in records of Wayne county of a call for an election or of an election, or of their being elected, and retained the same until June, 1872; that by a general expression and demand for [of] the people in opposition to the usurpation of the fiscal affairs of said county by the said five persons the Legislature did, on the 12th day of April, 1871, repeal the said act creating said district supervisors, and enacted that act reducing township organization into one act be re-enacted; that during their usurpation the said district supervisors under said act did, on the 18th day of January, 1868, while the county was under township organization with fifteen towns, as had been before divided, submit to the voters of said county the proposition, claiming to be under section seven of said act,
126 for the incorporation of the Illinois Southeastern Railroad Company, as in said bill set out, the propositions set forth in said bill to be voted on as one proposition, and therefore neither admits nor denies the said allegation of said bill, but, if material to the determination of this cause, asks for strict proof thereof.

Respondent has no knowledge, information, or belief about an election in Wayne county, Illinois, February 25th, 1868, upon said propositions in said bill mentioned or of the number of voters in said county at that time, nor of the number thereof who voted at said election, nor of the proceedings of the board of supervisors of Wayne county at their December term, A. D. 1868, as alleged in said bill, except as therein alleged, and thereupon neither admits nor denies said averments in said bill, but calls for strict proof thereof, if admissable or material to the case. Respondent knows nothing or has no knowledge, information, or belief of the proceedings of the Wayne county board of supervisors at their June term, A. D. 1869, as set forth in said bill, other that [than] what is alleged therein, and therefore neither admits nor denies the same, but calls for proof thereof.

127 Further answering, respondent says it has no knowledge, information, or belief regarding the proceedings of said Wayne county board at their meeting on the 9th day of September, 1869, as set forth in said bill, otherwise than as therein stated, and therefore neither admits nor denies the same, but asks for proof thereof. Further answering, respondent says it does not know, otherwise than by the statements of said bill, regarding the acts and doings of said board on the 19th of November, 1869, or the 15th day of January

and the 6th day of May, 1870, and has no knowledge, information, or belief concerning the same, and therefore neither admits nor denies said averments, but calls for proof thereof.

Respondent, further answering, denies that the law under which said donation bonds were issued provides that they shall only draw interest after maturity, and denies that said bonds were dated January 1st, 1870, and denies that the amendatory law, dated February 28th, 1869, is unconstitutional and void; denies that all the acts and doings of said board of supervisors is [are] void and without authority of law in regard to issuing of said bonds. Respond-
128 ent has no knowledge, information, or belief whether or no complainants own the real estate described in said bill, nor whether they each pay taxes on real and personal property each year, as therein alleged, and therefore neither admits nor denies the same, but calls for proof; admits that the auditor of said State is about to levy or certify a levy of said tax, to be assessed against the property of Wayne county, Illinois, and that the same is about to be collected against said taxable property, with which to pay the interest upon said bonds.

Admits that said bonds were sold by said railroad company and transferred by said company to different persons, and that the same are scattered far and wide over the country and in the hands of divers persons unknown to orators; admits that the tax to pay said interest and the principal of said bonds is collected by the township and county collectors of Wayne county, and by said township collector paid into the hands of said county collector, who pays the same over to the State treasurer, who pays the same to the holders of the bonds of said Wayne county; admits that the tax to
129 pay the same is (or was at the filing of this bill) about to be ordered levied by the auditor of the State of Illinois, who directs the county clerk to levy the same upon all the taxable property in said Wayne county.

And respondent, further answering, says that it became the purchaser for value, before due, in the usual course of its business, of said bonds and coupons without any notice of any of the defenses and objections set out in complainants' bill herein. Respondent avers that all it knew or was obliged to know in purchasing said bonds and coupons in manner above stated was the provisions of the charter of the Illinois Southeastern Railway Company and amendments and the contents and endorsements of the bonds; and respondent avers that there was nothing in said laws nor in the face or the endorsement of said bonds which could affect their validity in any manner in the hands of an innocent purchaser or holder, as it is above averred respondent was and as will more fully appear by an inspection of said laws, which are public laws, and of said bonds and their endorsements, true copies of which are hereto attached and made a part of this answer, marked Exhibits "A" and
130 "B," all of respondent's said donation bonds, Nos. 1 to 10, being *fac-similes* of the copy of No. 1, Exhibit "A," except the bond Nos. thereof. Respondent further avers that as a *bona fide* purchaser of said bonds and coupons, as it was as above stated, it

was not obliged to notice nor did it have any knowledge of the facts set forth in said bill as to the election of five supervisors instead of fifteen, or that they five acted as a board of supervisors instead of fifteen in calling said election, submitting said propositions to the voters thereat, and managing the fiscal affairs of the county in regard to the execution and issuing of said bonds and coupons; nor was respondent obliged, in buying said bonds and coupons as above stated, to notice or have knowledge of the matters and things, records, contained and set forth in said bill of complaint, and therefore said bonds and coupons are not affected in respondent's hands by the existence of such matters of record. Respondent further avers that, as to it and all other third persons dealing with said county bonds upon the market, said supervisors were *de facto* the supervisors in law for said county, and their acts and doings in the premises are and were binding upon said county. Respondent
131 further avers that said bonds and coupons so owned by it as aforesaid are valid obligations of said county, notwithstanding the matters and things set forth and alleged against their validity in said bill of complaint, and out [ought] to be paid as due to respondent.

That the temporary injunction issued herein enjoining the certifying, levying, collection, and payment of taxes thereon in payment of the principal and interest thereof as it becomes due ought to be dissolved.

And now, having fully answered, respondent prays to be hence dismissed with its reasonable costs, to be taxed.

CONNOLLY AND MATHER,
Sol's for Society for Savings.

EXHIBIT "A."

No. 1. UNITED STATES OF AMERICA, $1,000.
State of Illinois.

Wayne County Railroad Bond.

Registered by the auditor of public accounts of the State of Illinois. Principal and interest collected and paid by treasurer State of Illinois.

Know all men by these presents that the County of Wayne, State of Illinois, acknowledges itself to owe and be indebted to the "Illinois Southeastern Railway Company" or bearer in the sum
132 of one thousand dollars, which sum the said County of Wayne promises to pay, at the American Exchange National Bank, in the city of New York, on the first day of January, A. D. 1890, the said county reserving the right to pay this bond at any time after ten years from the date of its issue, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July of each year, on the presentation and surrender of the annexed coupons. This bond is one of a series of bonds issued

by Wayne county to aid in the construction of the Illinois Southeastern railway in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1867, and an act amendatory thereof, approved February 24th, 1869, and of an election of the legal voters of Wayne county, Illinois, held on the 25th day of February, 1868, under the provisions of said act. This bond is not to become a binding obligation on the county of Wayne until the following conditions is [are] complied with, to wit, that said company shall have com-
133 pleted or cause to be completed the whole line of said railroad within the limits of Wayne county, and the cars — be running upon the same; and for the payment of said sum of money and the interest accruing thereon, in the manner aforesaid, upon the performance of said condition, the faith of the said County of Wayne is hereby irrevocably pledged.

In witness whereof the said County of Wayne has executed this bond by causing the chairman of its board of supervisors to subscribe his name hereunto, and to be countersigned by the clerk of this court *and* affixing the seal of said court; all of which is done by and under the orders of the board of supervisors of Wayne county, at Fairfield, this the sixth day of May, A. D. 1870.

DANIEL WINGATE,
Chairman Board of Supervisors.

Countersigned by—
OLIVER HOLMES,
[SEAL.] *Clerk of County Court.*

STATE OF ILLINOIS, AUDITOR'S OFFICE,
SPRINGFIELD, *May 9th*, 1870.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been reg-
134 istered in this office this day pursuant to the provisions of an act entitled "An act to amend an act entitled An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1869, as well as the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor Public Accounts.

STATE OF ILLINOIS, } ss:
Wayne County, }

I, Oliver Holmes, clerk of the county court of Wayne county, in the State of Illinois, do hereby certify that the county court of said county have entered an order on the records of said county court directing me to endorse upon this bond the following words, to wit: All the conditions upon which this bond was to become a binding obligation of the county of Wayne have been complied with.

In testimony whereof I hereto affix my hand and the seal of said court, at Fairfield, this 6th day of May, A. D. 1870.

OLIVER HOLMES *Clerk.*

135 No. 92. UNITED STATES OF AMERICA, $500.
State of Illinois.

Wayne County Railroad Bond.

Registered by auditor of public accounts of the State of Illinois. Principal and interest collected and paid by the treasurer State of Illinois.

Know all men by these presents that the County of Wayne, State of Illinois, acknowledges itself to owe and be indebted to the "Illinois Southeastern Railway Company" or bearer in the sum of five hundred dollars, which sum the County of Wayne promises to pay, at the American Exchange National Bank, in the city of New York, on the 1st day of January, A. D. 1890, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July of each year, on the presentation and surrender of the annexed coupons, this bond being issued, under and pursuant to orders of the county court of Wayne county, Illinois, for subscription to the capital stock of the Illinois Southeastern Railway Company, as authorized by virtue of the laws of the State of Illinois; and the faith of the
136 County of Wayne is hereby irrevocably pledged for the payment of said principal and interest as aforesaid.

In witness whereof the said County of Wayne has executed this bond by causing the chairman of its board of supervisors to subscribe his name hereto, and to be countersigned by the clerk of this court *and* affixing the seal of said court; all of which is done at Fairfield, Illinois, by and under the order of the board of supervisors of Wayne county, this the nineteenth day of November, A. D. 1869.

DANIEL WINGATE,
Chairman Board of Supervisors.

Countersigned by—
OLIVER HOLMES,
[SEAL.] *Clerk of County Court.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *December 7th*, 1869.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of
137 counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor Public Accounts.

(Endorsed:) Filed August 14th, A. D. 1886. J. A. Jones, clerk.

138 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois,

In Circuit Court. June Term, A. D. 1886.

WILLIAM N. BORAH *et al.*
vs.
JOE E. WILSON, County Clerk, *et al.* } Bill in Equity for Injunction, &c.

The separate answer of Augustus T. Post, one of the defendants, to the bill of complaint herein filed.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold uncertainties and imperfections of said bill, for answer to so much or such parts thereof as he is advised it is material or necessary for him to answer, answering, says: He does not know, except by the statement of said bill, whether or no complainants are owners of real estate and are tax-payers in Wayne county, Illinois, and therefore neither admits nor denies the same, but asks for proof; admits that the county of Wayne adopted township organization as the mode of government for said county and entered upon the same at the June term, 1860; admits that the county court did appoint commissioners, who proceeded to divide the county into fifteen towns, as shown by the report set out
139 in said bill; admits that the management of the fiscal concerns of the county as adopted has never been changed, as averred in said bill, and that the division of the county into towns as made, &c., has remained the same to this date. Respondent does not know, nor has he any information or belief other than as alleged in said bill, whether or no said Illinois Southeastern R. R. Co. did duly organize under said act of Feb. 25th, 1867, and became a body corporate, but without any stock subscription being paid or assessed, and therefore neither admits nor denies the same, but asks for proof.

Further answering, respondent says he has no knowledge, information, or belief that five persons claiming to be the board of supervisors of said county of Wayne, claiming to represent the fifteen towns of said county, and claiming to act under the act of the Legislature of Illinois approved by the Gove-nor Feb'y 28th, 1867, assumed their office as district supervisors at the June term, 1867, without any order or notice of a change in the government of the fiscal affairs of the county of Wayne and without there being any record in records of Wayne county of a call for an election or of an election or of their being elected and retained the same until June, 1872; that by a general expression and demand of the people in

opposition to the usurpation of the fiscal affairs of the county
140 by the said five persons the Legislature did, on the 12th day of April, 1871, repeal the said act creating said district supervisors and enacted that act reducing township organization into one act be re-enacted; that during their usurpation the said district supervisors under said act did, on the 18th day of January, 1868, while the county was under township organization with fifteen towns, as had been before divided, submit to the voters of said county the proposition claiming to be under section seven of said act for the incorporation of the Illinois Southeastern Railroad Company, as in said bill set out, the proposition set forth in said bill to be voted on as one proposition, and therefore neither admits nor denies said allegations of said bill, but, if material to the determination of this cause, asks for strict proof thereof.

Respondent has no knowledge, information, or belief about an election in Wayne county, Ills., Feb'y 25th, 1868, upon said propositions in said bill mentioned or of the number of voters in said county at that time, nor of the number thereof who voted at said election, nor of the proceedings of the board of supervisors of Wayne county at their December term, A. D. 1868, as alleged in said bill, except as therein alleged, and therefore neither admits nor
141 denies said averments in said bill, but calls for strict proof thereof if admissible or material to this case.

Respondent knows nothing and has no knowledge, information, or belief of the proceedings of the Wayne county board of supervisors at their June term, A. D. 1869, as set forth in said bill, other than what is alleged therein, and therefore neither admits nor denies the same, but asks for proof thereof. Further answering, respondent says it does not know otherwise than by the statements in said bill regarding the acts and doings of said board on the 19th of November, 1869, or the 15th of January and the 6th day of May, 1870, and has no knowledge, information, or belief concerning the same, and therefore neither admits nor denies the said amounts, but asks for strict proof thereof. Respondent, further answering, denies that the law under which said donation bonds were issued provides that they shall only draw interest after maturity, and denies that the said bonds were dated January 1st, 1870, and denies that the amendatory law, dated Febr'y 28th, 1869, is *is* unconstitutional and void; denies that all the acts and doings of said board of supervisors is void and without authority of law in regard to the issuing of said bonds.

Respondent has no knowledge, information, or belief whether
142 or no the complainants own the real estate described in said bill, nor whether they each pay taxes or real and personal property each year, as therein alleged, and therefore neither admit- nor deny- the same, but ask- for proof; admits that the auditor of said State is about to levy or certify a levy of said tax to be assessed against the property of Wayne county, Illinois, and that the same is about to be collected against said taxable property with which to pay the interest upon said bonds; admits that said bonds were sold by said railroad company and transferred by said company to different persons, and that the same are scattered far and wide over the

country and in the hands of divers persons unknown to orators; admits that the tax to pay said interest & the principal of said bonds is collected by the township & county collectors of Wayne county, and by said township collectors paid into the hands of said county collector, who pays the same over to the State officers, who pays it to the holders of said bonds and coupons; admits that the tax to pay the same is (or was at the filing of this bill) about to be ordered levied by the auditor of the State of Illinois, who directs the county clerk to levy the same upon all the taxable property in said Wayne county.

And respondent, further answering, says that he purchased for value, in the usual course of his business, without notice
143 of any defence thereto, a part of the bonds described in said bill and their coupons, and is now the owner and holder thereof, viz: Nos. 1 to 46, both inc., for $500 each, dated Sept. 9th, 1869, and Nos. 287, 291, 296, 402, 403, 404, 405, 406, 407, 408, 411, 412, 414, 415, 418, 420, 423, 427, 428, 429, 430, 431, 435, 436, 437, 438, 440, 441, 443, 444, 445, 446, 463, 464, 465, 466, 473, 474, 476, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, dated Jan'y 20th, 1870, for $100 each, and Nos. 5, 6, 7, 8, 89, 91, 92, 93, 94, 95, dated Nov. 16, 1869, and Nos. 32, 33, 51, 52, 73, 83, 84, 85, dated Nov. 19, 1869, for $100 each, all belonging to the subscription issue of said bonds, and Nos. 11, 12, 13, 20, & 56, for $1,000 each, dated May 6th, 1870, of the donation issue thereof. Respondent avers that all he was obliged to know as the innocent buyer of said bonds & coupons was the law and the recitals of said bonds, and there was nothing on the face of either which could or did effect their validity in his hands, as will more fully appear by an inspection of the laws under which said bonds and coupons issued and the recitals of the bonds, as will appear by them when produced when & where this hon. court shall direct. Respondent further avers that as a *bona fide* purchaser of said bonds and coupons, which he is as above stated, he was not obliged to notice, nor did he have any knowledge of the alleged matters in said bill as to the election of five supervisors instead of fifteen, or that they five
144 acted as a board of supervisors instead of fifteen in calling said election, submitting said propositions to the voters thereat, and managing the fiscal affairs of said county in regard to the execution and delivering of said bonds and coupons, nor was respondent obliged in buying said bonds and coupons, as before stated, to notice or have knowledge of the matters and things in said county records contained and set forth in said bill of complaint, and therefore said bonds and coupons are not affected in respondent's hands by the existence of such matters of record. Respondent further avers that as to it and all their [other] persons dealing with said county bonds upon the market said supervisors were *de facto* the supervisors in law for said county, and their acts and doings in the premises are and were binding upon said county.

Respondent further avers that said bonds and coupons so owned by him, as aforesaid, are valid obligations of said county, notwithstanding the matters and things set forth and alleged against their

validity in said bill of complaint, and ought to be paid as due to respondent.

That the temporary injunction issued herein, enjoining the certifying, levying, collecting, and paying the principal and interest of said bonds and coupons owned by respondent, as it [they] became due, ought to dissolved.

And now, having fully answered, respondent prays to be hence dismissed with his reasonable costs herein expended.

CONNOLLY & MATHER,
His Solicitors.

(Endorsed:) Filed August 14, 1886. J. A. Jones, clerk.

145 And afterwards, to wit, on August 21st, A. D. 1886, came Daniel Wingate, chairman of board of supervisors of Wayne county, and filed in said clerk's office his affidavit in said cause; which said affidavit is in the words and figures following, to wit:

STATE OF ILLINOIS, }
County of Wayne. }

To the auditor of public accounts of the State of Illinois:

I, Daniel Wingate, chairman of the board of supervisors of Wayne county, Illinois, do hereby certify that the board of supervisors of and acting for and in behalf — the county of Wayne and State of Illinois have issued three hundred and thirty-four (334) bonds of said county, each for the sum of one hundred dollars, dated the 20th day of January, A. D. 1870, amounting to the sum total of thirty-three thousand four hundred dollars ($33,400), due on the first (1st) day of July, A. D. 1889, or at any time after five years from the date of their issue, at the option of said county of Wayne, bearing interest from date at the rate of (7) seven per cent. per annum, payable semi-annually, on the first (1st) days of January and July of each year, at the American Exchange National Bank, in New
146 York; that said bonds were issued to and in aid of the construction of the Illinois Southeastern railway under and by virtue of a general law of the State of Illinois authorizing counties, towns, &c., to subscribe to the capital stock of railway companies, enacted and approved on the (6th) sixth day of November, A. D. 1849, and under an order of the said board of supervisors made and entered on the 18th day of January, A. D. 1868, and for an election held pursuant to said order on the 25th day of February, 1868, and that all the acts and conditions required to be done preliminary to the issuing, &c., of said bonds and each of them have been in all regards complied with.

DANIEL WINGATE,
Chairman of Board of Supervisors.

[Revenue stamp.] Sworn to and subscribed before Oliver Holmes, the clerk of said board of supervisors, this 21st day of January, A. D. 1870.

[SEAL.] OLIVER HOLMES, *Co. Clerk.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *August 9th*, 1886.

I, Charles E. Swigert, auditor of public accounts of the State
147 of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of Daniel Wingate, chairman of county board, Wayne county, in regard to registration of bonds issued by said county, now on file in and forming part of the records of *the records of* this office.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of my office, at Springfield, the day and year first above written.

CHAS. P. SWIGERT,
Auditor Public Account-.

(Endorsed:) Filed August 21st, 1886. J. A. Jones, clerk.

And afterwards, to wit, on the 21st day of August, A. D. 1886, came Daniel Wingate, chairman of board of supervisors, and filed in said clerk's office his three certificates of registration of bonds in said cause, dated, respectively, Sep. 9, '69; Nov. 19, '69, & May 6, '70; which said certificates are, respectively, in the words and figures following, to wit:

STATE OF ILLINOIS, *County of Wayne:*

FAIRFIELD, *September 9th*, 1869.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

SIR: I herewith transmit to you for registration in your
148 office, under the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being sixty-six (66) in number, dated September 9th, 1869, amounting to thirty-three thousand dollars ($33,000), payable on the first day of January, 1890, and bearing interest at the rate of seven per centum per annum, payable semi-annually. These bonds are issued by the county of Wayne and State of Illinois to the Illinois Southeastern Railway Company under and by virtue of the provisions of an act authorizing counties and cities in the State of Illinois to subscribe to the capital stock — or make loans to railway Cos., and also "An act to amend an act entitled An act to incorporate the 'Illinois Southeastern Railway Company,'" approved February 24th, 1869; and I, as chairman of board of supervisors of said county of Wayne, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefit of said act last referred to have been fully complied with, to the best of my knowledge and belief.

149 (Signed) DANIEL WINGATE,
Chairman Board of Supervisors of Wayne County, Illinois.

Subscribed and sworn to by the said Daniel Wingate before me this ninth day of September, A. D. 1869.

[SEAL.] OLIVER HOLMES,
Clerk County Court, Wayne Co., Ill.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *August 9th*, 1886.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of Daniel Wingate, chairman of county board of Wayne county, in regard to registration of bonds issued by said county, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and
[L. S.] affix the seal of my office, at Springfield, the day and year first above written.

CHAS. P. SWIGERT,
Auditor of P. A.

(Endorsed:) Filed September 27th, 1869. C. E. Lippincott, auditor P. A.

(Endorsed:) Filed August 21, 1886. J. A. Jones, clerk.

150 STATE OF ILLINOIS, *County of Wayne:*

NOVEMBER 19TH, 1869.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois:

SIR: I herewith transmit to you for registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being 166 of one-hundred-dollar bonds and 34 of five-hundred-dollar bonds in number, dated November 19th, 1869, amounting to ($33,600) thirty-three thousand six hundred dollars, the one-hundred-dollar bonds payable on July 1st, 1889; the five-hundred-dollar bonds payable January 1st, 1890, and bearing interest at the rate of seven per centum per annum, payable semi-annually. These bonds are issued by the board of supervisors of the county of Wayne and State of Illinois to the "Illinois Southeastern Railway Company," under and by authority of the provisions of an act of the Legislature, approved the 25th day of February, 1867, incorporating the said railway company, and an order of the board of supervisors of Wayne
151 county, Illinois, made on the 18th day of January, 1868, and an election held in said county by virtue of said order on the 25th day of February, 1868; and I, as chairman of said board of supervisors, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the rights of said act last referred to have been fully complied with, to the best of my knowledge and belief.

DANIEL WINGATE,
Chairman of Board of Supervisors, Wayne County, Illinois.

[SEAL.] Subscribed and sworn to by the said Daniel Wingate before me this 3d day of Dec., A. D. 1869.

OLIVER HOLMES,
County Clerk, Wayne County, Illinois.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Aug. 9th*, 1886.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of Daniel Wingate, chairman of county board of Wayne Co., in regard to registration of bonds issued by said county, now on file in and forming part of the records of this office.

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In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] CHAS. P. SWIGERT,
Auditor of Public Accounts.

(Endorsed:) Filed Dec. 7th, 1869. C. E. Lippincott, auditor public accounts.

(Endorsed:) Filed August 21st, 1886. J. A. Jones, clerk.

STATE OF ILLINOIS, *County of Wayne:*

MAY 6TH, 1870.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois:

SIR: I herewith transmit to you for registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being one hundred in number, dated May 6th, 1870, amounting to ($100,000.00) one hundred thousand dollars, payable on the 6th day of May, 1890, and bearing interest at the rate of seven per centum per

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annum, payable semi-annually. These bonds are issued by the boardof supervisors in [of] the county of Wayne and State of Illinois to the Illinois Southeastern Railway Company, under and by authority of the provisions of an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25th, 1867, and an act amendatory thereof, approved Feb'y 24th, 1869, and an election of the legal voters of Wayne county, Illinois, held on the 25th day of February, 1868; and I, as chairman of said board of supervisors, do certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of the said act last referred to have been fully complied with, to the best of my knowledge and belief.

DANIEL WINGATE,
Chairman Board of Supervisors, Wayne County, Illinois.

Subscribed and sworn to by the said Daniel Wingate before me this 6th day of May, A. D. 1870.

[SEAL.] OLIVER HOLMES,
County Clerk.

154 AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Aug. 9th*, 1886.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of Daniel Wingate, as chairman of county board of Wayne county, in regard to registration of bonds issued by said county, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] CHAS. P. SWIGERT,
Auditor Public Accounts.

(Endorsed:) Filed May 9th, 1870. C. E. Lippincott, auditor public accounts.

(Endorsed:) Filed August 21st, 1886. J. A. Jones, clerk.

155 And afterwards, to wit, on September 29th, 1886, came Jos. E. Wilson and filed in said clerk's office a copy of the abstract of votes cast at an election held in said Wayne county May 18th, 1867; also abstract of votes cast in the 1st, 2nd, & 4th district- May 18th, 1867; which said several abstracts are in the words and figures following, respectively, to wit:

"EXHIBIT 1."

	1st dist.			2nd district.										4th dist.			
	D. Wingate.	John Keen, Jr.	R. T. Forth.	M. H. Harris.	Titus Buffington.	J. B. Borah.	D. N. Ulm.	Jeff. Sloan.	A. Rinard.	L. T. Moore.	J. C. Bestom.	Tom Smith.	Wm. McClure.	M. Book.	L. M. Cisna.	William Mix.	W. H. Mix.
Four Mile	27	43															
Arington	20	.....	44														
Big Mound	.....	.....	.....	73	34	38	1	1									
Lamard	.....	.....	.....	13	9	52	33	.....	5	3	3						
Barnhill	.....	.....	.....	140	114	67	10	.....	.....	.....	.....	1	1				
Jasper	.....	.....	.....	25	23	56	32	.....	.....	.....	.....	.....	.....	3			
Zif																	
Beetford	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	19		
Indian Prairie	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	31	1	1
	47	43	44	251	180	213	76	1	5	3	3	1	1	3	50	1	1

We do hereby certify that the foregoing is a true and correct abstract of votes cast at an election held in said county on Saturday,

the 18th day of May, A. D. 1867, for the respective persons
156 therein named as supervisors.

W. L. BEESON, *J. P.*
NATHAN ATTEBERRY, *J. P.*

Attest: OLIVER HOLMES, *Cl'k.*

I, Joseph E. Wilson, county clerk of Wayne county, State of Illinois, do certify that the above is a true and correct copy of the files in my office of the returns of an election for district supervisors of the county of Wayne; and I further certify that I find no return nor certificate on [of] an election for the third district; neither do I find any return of any election on the 1st Tuesday of April, 1867, for district supervisor.

Dated this 21st day of September, 1886.

[Wayne County Seal.]

J. E. WILSON, *Co. Cl'k.*

EXHIBIT "2."

(*Abstract of 1st Dist.*)

Abstract of votes given in the county of Wayne and State of Illinois for supervisors of the first district on Saturday, the 18th day of May, one thousand eight hundred and sixty-seven.

D. Wingate had 47 votes.
John Keen, Jr., had 43 votes.
R. T. Forth had 44 votes.

157 Poll books opened and abstract made in our presence, at the clerk's office, in Fairfield, this 25th day of May, A. D. 1867.

WM. L. BEESON, *J. P.*
NATHAN ATTEBERRY, *J. P.*

STATE OF ILLINOIS, } *ss:*
Wayne County, }

CLERK'S OFFICE, COUNTY COURT,
FAIRFIELD, *May 25th*, 1867.

I, Oliver Holmes, clerk of the county court within the county and State aforesaid, do hereby certify that the foregoing is a correct statement of the votes cast for the above-named persons as supervisors of the first district at an election held in different towns of said district on Saturday, the 18th day of May, A. D. 1867.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Fairfield, this 25th day of May, A. D. 1867.

OLIVER HOLMES, *Co. Cl'k.*

I, Joseph E. Wilson, county clerk of Wayne county, State of Illinois, hereby certify that the above is a true and correct copy of files in my office.

Dated this 20th day of September, 1886.

[Wayne County Seal.]

J. E. WILSON,
County Clerk.

158 EXHIBIT "3."

(*Abstract of 2nd Dist.*)

Abstract of votes given in the county of Wayne and State of Illinois for supervisors of the second district on Saturday, the 18th day of May, one thousand eight hundred and sixty-seven.

M. H. Harris had two hundred and fifty-one votes.
Titus Buffington had one hundred and eighty votes.
J. B. Borah had two hundred and thirteen votes.
D. N. Ulm had seventy-six votes.
Jefferson Sloan had one vote.
A. Rinard had five votes.
T. L. Moore had three votes.
J. C. Bestom had three votes.
T. Smith had one vote.
Wm. McClure, one vote; and
M. Book had three votes.

Poll books opened and abstract made in our presence, at the clerk's office, in Fairfield, this 25th day of May, A. D. 1867.

W. L. BEESON, *J. P.*
NATHAN ATTEBERRY, *J. P.*

STATE OF ILLINOIS, } ss:
County of Wayne, }

CLERK'S OFFICE, COUNTY COURT,
FAIRFIELD, *May 25th*, 1867.

I, Oliver Holmes, clerk of the county court within the county and State aforesaid, do hereby certify that the foregoing is a cor-
159 rect statement of the votes cast for the above-named persons as supervisors of the second district at an election held in the different towns of said district on Saturday, the 18th day of May, A. D. 1867.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Fairfield, in my office, this 25th day of May, A. D. 1867.

OLIVER HOLMES, *Co. Cl'k.*

I, Joseph E. Wilson, county clerk of Wayne county, Ill., hereby certify that the above is a true and correct copy of files in my office.

[Wayne County Seal.]

JOSEPH E. WILSON,
County Clerk.

"EXHIBIT 4."

(*Abstract of 4th Dist.*)

Abstract of votes given in the county of Wayne and State of Illinois for supervisors of the fourth district on Saturday, the 18th day of May, one thousand eight hundred and sixty-seven.

L. N. Cisne had fifty votes.
William Mix had one vote.
William H. Mix had one vote.

Poll books opened and abstract made in our presence, at
160 the clerk's office, in Fairfield, this 25th day of May, A. D. 1867.

W. L. BEESON, *J. P.*
NATHAN ATTEBERRY, *J. P.*

STATE OF ILLINOIS, } ss:
Wayne County, }

CLERK'S OFFICE, COUNTY COURT,
FAIRFIELD, *May 25th, A. D.* 1867.

I, Oliver Holmes, clerk of the county court within the county and State aforesaid, do hereby certify that the foregoing is a correct statement of the votes cast for the above-named persons as supervisors of the fourth district at an election held in the different towns of said district on Saturday, the 18th day of May, A. D. 1867.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Fairfield, this 25th day of May, A. D. 1867.

OLIVER HOLMES,
County Clerk.

I, Joseph E. Wilson, county clerk of Wayne county, State of Illinois, hereby certify that the above is a true and correct copy of files in my office.

Dated this 20th day of Sept., 1886.

[Wayne County Seal.]

J. E. WILSON, *Co. Cl'k.*

(Endorsed:) Filed Sept. 29th, 1886. J. A. Jones, clerk.

161 And afterwards, to wit, on September 29th, A. D. 1886, came the complainants, by their solicitors, and filed in the clerk's office of this court copies of proceedings of board of supervisors of Wayne county, marked, respectively, Exhibits "5," "6," and "7;" which said exhibits are, respectively, in the words and figures following, to wit:

"EXHIBIT 5."

Called Session, January, A. D. 1868.

STATE OF ILLINOIS, } ss:
Wayne County, }

Board of Supervisors, Call Session. January Term, A. D. 1868.

On Saturday, the 18th day of January, A. D. 1868, being the 18th day of January, 1868.

Present: Daniel Wingate, chairman; Oliver Holmes, clerk; Daniel Haines, sheriff; Levi M. Cisne, Miles Harris, Jacob B. Borah, and Copeland McKelvy.

Be it remembered that on Saturday, the 18th day of January, 1868, the same being as yet one of the days of the aforesaid meeting of said board of supervisors, the following, among other, proceedings was [were] had and entered of record on said board in words and figures following, to wit: On motion, it is ordered that the notice filed in the clerk's office by Miles Harris and Jacob B. Borah for a
162 call meeting of the aforesaid board be entered of record, and is as follows, and was filed in the clerk's office January 13th, 1868:

To Daniel Wingate, Levi Cisne, and Copeland McKelvy, supervisors of Wayne county, Illinois.

GENTLEMEN: There will be a special meeting of the board of supervisors of Wayne county, Illinois, convened at Fairfield, in said county, on Saturday, the 18th day of January, A. D. 1868, for the purpose of ordering an election for submitting to the people of Wayne county the question of donating and subscribing county bonds to and in the construction of a railroad through Wayne county, and such other purposes and business as said court may see proper to transact.

Witness our hands and seals this 13th day of January, A. D. 1868.

JACOB B. BORAH, [SEAL.]
MILES H. HARRIS, [SEAL.]
Supervisors of Wayne County, Illinois.

On motion of Levi M. Cisne, it is ordered by the board of supervisors of Wayne county, in the State of Illinois, that a special election shall be held in the usual places of voting in the said county of Wayne, on the 25th day of February, A. D. 1868, upon the following propositions, to wit:

1st. That the county of Wayne subscribe the sum of one
163 hundred thousand dollars to the capital stock of the Illinois Southeastern Railway Company.

2nd. That in payment for such subscription to the capital stock of said company bonds of the said county of Wayne be issued to said railway company, one-half of the amount to be in bonds of the de-

nomination of one hundred dollars each and the other half of said bonds to be of the denomination of not less than five hundred nor more than one thousand dollars each, said bonds to bear interest, at the rate of seven per cent. per annum, from the date of their delivery to the said railway company, payable half-yearly, in the city of New York, on the first days of January and July of each year, said bonds to be so drawn that the county of Wayne may pay them at any time after five years from the date of issuing the same, but the said county of Wayne shall not be compelled to pay the principal of any of said bonds until after the expiration of twenty years from the date of issuing the same, and that the faith of the county of Wayne be pledged for the payment of the interest accruing upon said bonds and for the ultimate payment of the principal: Provided, That the said bonds so issued shall be delivered to said railway company and become binding upon the county of Wayne in the following manner, to wit:

164 The board of supervisors of Wayne county shall deliver one-third of said amount of one hundred thousand dollars of bonds to the said railway company when ten consecutive miles of the grade, bridging, and tieing of said railroad shall be ready for the iron in said county of Wayne, and not sooner; and when another ten miles of said railroad shall be completed as aforesaid in said county the board of supervisors shall deliver to said railway company another one-third of the amount of said one hundred thousand dollars of said bonds, and not sooner; and when the whole of the grading, bridging, and tying of said railroad shall be completed and ready for the iron of said railroad in the said county of Wayne the board of supervisors of said county shall deliver to said railway company the remainder of said one hundred thousand dollars of bonds, and not sooner.

3rd. That a tax upon all the taxable property of said Wayne county be annually levied and collected sufficient to pay the interest upon said bonds as it becomes due and payable according to conditions of said bonds.

That all the aforesaid propositions as to subscriptions be voted upon as one question, and all voters of said Wayne county

165 who favor the adoption of said propositions shall have written or printed on their ballots "For subscription," and all voters of said county of Wayne who oppose the adoption of said proposition- shall have written or printed on their ballots "Against subscription."

And be it further ordered by the board of supervisors of said Wayne county, in the State of Illinois, that at the special election heretofore ordered to be held at the usual place of voting, in the said county, on the 25th day of February, A. D. 1868, the following additional propositions shall be voted upon as an inducement or bonus towards building the Illinois Southeastern railway:

1st. That the county of Wayne, in the State of Illinois, shall donate the sum of one hundred thousand dollars to the Illinois Southeastern Railway Company.

2nd. That, in payment of such donation, bonds of the said county

of Wayne be issued, made payable, and delivered to the directors of the said railway company, and such bonds shall be in any sum not less than one hundred dollars nor mor- than one thousand dollars each, in the discretion of the board of supervisors of said county of Wayne, said bonds to bear interest from the time of the completion of said Illinois Southeastern railway in running order
166 through the said county of Wayne, at the rate of seven per cent. per annum, payable half-yearly, at the city of New York, on the first days of January and July of each year after such interest becomes due, the said bonds to be so drawn as to give the said county of Wayne the right to pay them or any of them at any time after ten years after the date of issuing the same, but reserving to the said county of Wayne the right of not being compelled to pay the principal of said bonds until the expiration of twenty years after the date of issuing the same: Provided, That the bonds so donated, issued, and delivered shall not mature nor become due or payable, nor any of the interest thereon or any part thereof become due or payable, nor shall any liability attach to said county of Wayne to pay said bonds or any part of them nor any of the interest upon them until said railway shall be completed within the whole limits of the line of said Wayne county and the cars running thereon, and each of the bonds so donated shall declare upon its face the conditions upon which it becomes due and payable.

3rd. That the faith of the said county of Wayne be pledged for the payment of the interest accruing upon said bonds according to the conditions of the same and for the ultimate payment of
167 the principal, and that a tax upon all the taxable property in said county of Wayne sufficient to pay the interest upon said bonds as it accrues be annually levied and collected for the payment of interest.

That all of said propositions for donation to said Illinois Southeastern Railway Company be voted upon as one question, and all the voters of said county of Wayne who favor the adoption of said proposition shall have written or printed upon their ballots "For donation," and all the voters of said county of Wayne who oppose the adoption of said proposition shall have written or printed upon their ballots "Against donation," which election shall be held in accordance with the laws governing the general elections of this State, which election will be opened at eight o'clock in the morning and will continue open until six o'clock of the same day.

That the line of said railway shall be located and run between the southwest corner of section fifteen, township one south, range seven east, and a point not more than one and one-half miles east of said southwest corner of said section fifteen, in said township and range.

It is hereby expressly agreed and understood that if the
168 company or corporation who undertake to build said road should do enough work upon the same to entitle them to receive any of said bonds of Wayne county the [they] shall enter into an obligation with the board of supervisors of Wayne county binding themselves in a legal manner to complete the road through the entire length of Wayne county ready for the cars and rolling stock

within six years from the date of the delivery of the first bonds of said county of Wayne to them, or on condition that if the road is not completed within said time that the road-bed, ties, bridges, culverts, rails, and all the materials composing said road within the county of Wayne shall be completely forfeited and become the sole and exclusive property of the said Wayne county, to be used by the said Wayne county thereafter as they, by said board of supervisors, shall think best. By order of the county court.

I, Joseph E. Wilson, county clerk of Wayne county, do hereby certify that the foregoing is a true and correct copy of the record of proceedings had and part of record in my office, as appears of said record, commencing after the heading marked "Ex. No. 5."

Dated Fairfield, Wayne Co., Ill., Sept. 25th, 1886.

[Seal Wayne County.]

J. E. WILSON, *Co. Cl'k.*

169 And afterwards, to wit, on September 29th, A. D. 1886, came the parties herein, by their solicitors, and file- in said clerk's office a stipulation in said cause; which said stipulation is in the words and figures following, to wit:

CIRCUIT COURT, UNITED STATES, *Southern District of Illinois,* } *ss:*

June Term, 1886.

WM. N. BORAH *et al.* *vs* J. E. WILSON *et al.* } Bill for Injunction and Cancellation of Bonds.

It is admitted that the complainants are tax-payers of Wayne county, Illinois.

Complainants have leave to substitute the amended printed bill of complaint for the original, with leave to withdraw the original copy.

It is admitted that the Exhibit "A" of complainant- correctly sets forth the division of the county of Wayne, March term, 1860, into township organization.

It is agreed that the act Feb. 2d, 1867, of the Legislature of the State of Illinois, entitled "An act to change the time of electing certain officers in a county therein named;" also the original act and amendatory acts incorporating the Ill. S. E. R. R. Co.,

170 approved, respectively, on Feb. 25, 1867, and Feb. 24th, 1869, are admitted as evidence; also that taxes has [have] been regular- extended, collected, and paid to pay interest on said bonds under the registration; that the parties holding the said bonds are *bona fide* holders without notice, except as to the want of power as declared by the various acts of the Legislature referred to in the bill and answers.

It is admitted that no election was held by the voters of Wayne

county directly on the question of adopting the act of Feb'y 2d, 1867, entitled "An act to change the time of electing certain officers in a county therein named," but an election was held by said voters in May, 1867, under said act, for the election of district supervisors for the several district- of said county, as specified in said act, at which election supervisors were elected for the several districts of said county in accordance with the provisions of said act.

It is further stipulated that the following, Exhibits "A" & "B," are true copies of one each of the subscription and donation issue of said bonds, together with the certificates and endorsements thereon.

H. TOMPKINS,
BELL AND GREEN, *For Pl'ffs.*
CONNOLLY AND MATHER,
BAILEY AND SEDGWICK, AND
SAUNDERS AND HAYNES,
For Defendants.

(Endorsed:) Filed Sept. 29th, 1886. J. A. Jones, clerk.

171 "EXHIBIT 6."

STATE OF ILLINOIS, }
Wayne County, } *ss:*

Board of Supervisors. June Term, A. D. 1869.

On this the seventh day of June, in the year of our Lord one thousand eight hundred and sixty-nine, being the 1st day of June term, 1869.

Present: Daniel Wingate, chairman; Oliver Holmes, clerk; L. D. Bennett, sheriff; Copeland McKelvy, Miles N. Harris, J. B. Borah, L. M. Cisne, members of the board of supervisors.

Attest: OLIVER HOLMES, *Clerk.*

Be it remembered that on this the 7th day of June, A. D. 1869, the same being as yet one of the days of the aforesaid meeting of said board of supervisors, the following, among other, proceedings was [were] had and entered of record on said board in the words and figures following, to wit:

On motion of Copeland McKelvy it is hereby ordered by the court that C. C. Bogg be, and he is hereby, authorized to procure, at the cost of Wayne county, suitable blanks, engraved forms, of subscription and donation bonds, to be issued the [to] the Illinois South-
eastern Railway Company according to the orders of this
172 court heretofore entered making such subscription and donation. The forms of one-half of said subscription bonds, to wit, fifty thousand dollars, shall be in the sum of one hundred dollars each, and the remainder of said subscription bonds shall be in the sum of five hundred dollars, and all of said subscription bonds shall be substantially in the following words, to wit:

UNITED STATES OF AMERICA,
State of Illinois.

[Vignette. Train of cars.]

No. —. *Wayne County Railroad Bond.* $—.

Know all men by these presents that the County of Wayne, State of Illinois, acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company or bearer in the sum of — dollars, which sum the said County of Wayne promises to pay, at the —— Bank, in the city of New York, on the — day of ——, A. D. 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per centum per annum, payable semi-annually, on the first day- of January and July of each year, on the presentation and sur-
173 render of the annexed coupons.

This bond is issued under and pursuant to orders of the county court of Wayne county for subscription to the capital stock of the Illinois Southeastern Railway Company, as authorized by the law of State of Illinois.

And the faith of the county of Wayne is hereby firmly pledged for the payment of said principal and interest as aforesaid.

Wayne County Seal. In testimony whereof the said county of Wayne has executed this bond by causing the chairman of the Board of Supervisors to subscribe his name hereto and to be countersigned by the clerk of the court, and affixing the seal of said court.

All of which is done by and under the order of the board of supervisors of Wayne county, at Fairfield, this the — day of ——, A. D. 18—.

—— ——,
Chairman Board of Supervisors.

Countersigned by—

—— ——,
County Clerk.

And to said form of bonds there shall be attached forty blank forms for coupons, for the amount of the semi-annual interest accruing thereon, according to the denomination of said bonds.

174 The form of said donation bonds shall be in the sum of one thousand dollars each, to the amount of one hundred thousand dollars, and shall be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
State of Illinois.

[Vignette. Train of cars.]

No. —. *Wayne County Railroad Bond.* $—.

Know all men by these presents that the County of Wayne, State

of Illinois, acknowledges itself to owe and be indebted to the Illinois Southeastern Railway Company or bearer in the sum of one thousand dollars, which said sum the said County of Wayne promises to pay, at the —— Bank, in the city of New York, on the — day of ——, A. D. 18—, the said county reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of seven per centum per annum, payable semi-annually, on the first day- of January and July of each year, on the presentation and surrender of the annexed coupons.

This bond is one of a series of bonds issued by Wayne county to aid in the construction of the Illinois Southeastern railway
175 in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois entitled "An act to incorporate the Ill. S. E. R. R. Co," approved February 25th, 1867, and an act amendatory thereof, approved February 24th, A. D. 1869, and of an election of the legal voters of Wayne county, Illinois, held on the 25th day of February, A. D. 1868, under the provisions of said act. This bond is not to become a binding obligation upon said county until the following condition is complied with, to wit, that said company shall have completed or cause to be completed the whole line of said railroad within the limits of said county, and the cars running upon the same; and for the payment of said sum of money and the accruing interest thereon, in the manner aforesaid, upon the performance of said condition, the faith of the county is hereby irrevocably pledged.

In testimony whereof the said County of Wayne County Seal. Wayne has executed this bond by causing the chairman of the board of supervisors to sign his name hereto, and to be countersigned by the clerk of this court *and* affixing the seal of said court; all of which is done by and under the order of the board of supervisors of Wayne county, at Fairfield, this — day of ——, A. D. 18—.

—— ——,
Chairman of Board of Supervisors.

Countersigned by—
—— ——,
County Clerk.

176 I, Joseph E. Wilson, county clerk of Wayne county, do hereby certify that the above and foregoing is a correct copy of part — proceedings of the board of supervisors of said county at said session, as appears from the records of my office.

[Wayne County Seal.]

J. E. WILSON,
County Clerk.

("EXHIBIT 7.")

October Special Term, A. D. 1868.

STATE OF ILLINOIS, } ss:
Wayne County, }

Board of Supervisors. October Called Term, A. D. 1868.

On this the 8th day of October, A. D, 1868, upon the call of Daniel Wingate, Miles H. Harris, and J. B. Borah, three of the members of the board of supervisors of Wayne county, the said board of supervisors met pursuant to said call: Oliver Holmes, county clerk; Daniel Haynes, deputy sheriff; Daniel Wingate, Copeland McKelvy, Jacob B. Borah, Miles H. Harris, Levi M. Cisne, members of the board of supervisors of Wayne county.

Be it remembered that on Thursday, the 8th day of Octo-
177 ber, A. D. 1868, the same being as yet one of the days of the aforesaid meeting of said board of supervisors, the following, among other, proceedings was [were] had and entered of record on said board in the words and figures following, viz:

On motion of Jacob B. Borah, it is hereby ordered that Daniel Wingate, Copeland McKelvy, and Miles H. Harris be, and the- are hereby, appointed a committee to investigate and report to the trustee hereinafter named when the first ten miles of the Illinois Southeastern railway shall be completed in compliance with the order of the county court passed on the 20th day of January, A. D. 1868, and voted for by the people of said county on the 25th day of February, A. D. 1868; and they shall also report when each successive section of said road is completed in compliance with the said order; and Thomas L. Cooper, who is hereby appointed trustee as aforesaid, when it is reported to him that the first ten miles of said road is completed as aforesaid, shall thereupon at once deliver to the president of the said Illinois Southeastern Railway Company one-third of the amount subscribed by the said Wayne county, in accordance with the terms of said order, and shall at the same time re-
178 ceive from the president of the said Illinois Southeastern Railway Company an equal amount of the stock of the said company, and similarly with each of the said instalments of said subscription. Upon the final completion of the said railway through Wayne county the said Thomas L. Cooper, trustee, shall, and he is hereby directed to, sell and transfer all the stock in the said railway which may be in his hands belonging to said Wayne county to the president of the said Illinois Southeastern Railway Company or to his order, and to no other person whatever, and he shall receive in consideration for the said stock the sum of one hundred dollars, and that the said trustee shall report to this board from time to time his acts and doings herein. The said trustee may, and is hereby authorized to, transfer the said stock by endorsement under his hand as trustee upon the back of certificate of stock, and the said transfer,

in compliance with this order, shall be a full and complete transfer of all interest which the said Wayne county may have in the said stock.

DANIEL WINGATE, *Chairman.*

I, J. E. Wilson, county clerk of Wayne county, State of Illinois, do hereby certify that the above is a true and correct copy of the record of proceedings in my office.

179 Dated at Fairfield, Wayne county, Illinois, this 15th day of September, 1886.

[Wayne County Seal.]

J. E. WILSON,
County Clerk.

(Endorsed:) Filed September 29th, A. D. 1886. J. A. Jones, clerk.

And afterwards, to wit, on September 29th, A. D. 1886, came complainants, by their solicitors, and filed in said clerk's office an abstract of votes cast in Wayne county on February 25th, 1868; which said abstract is in the words and figures following, to wit:

Abstract of votes given in the county of Wayne and State of Illinois for and against subscribing $100,000 and for and again [against] donating $100,000 to the Southeastern Illinois railway by Wayne county on Tuesday, the 25th day of February, one thousand eight hundred and sixty-eight.

Townships.	For subscription.	Against subscription.	For donation.	Against donation.
Barnhill	396	------	396	
Arington	103	79	103	79
Elm	53	66	53	66
Four Mile	105	86	105	86
Zif	------	44	------	44
Lamard	210	------	210	
180 Leech	85	9	88	6
Hickory Hill	14	103	14	103
Big Mound	110	3	110	3
Jasper	128	6	128	6
Indian Prairie	113	79	118	76
Massilon	16	38	16	38
Bedford	155	11	155	12
Mount Erie	41	119	40	120
Brush Creek	2	158	1	159
	1,531	801	1,537	798

Poll books opened and abstract made in our presence, at the clerk's office, in Fairfield, this 2nd day of March, A. D. 1868.

M. H. HARRIS, *J. P.*
WM. W. GEORGE, *J. P.*

Attest: OLIVER HOLMES, *Clerk.*

I, Joseph E. Wilson, county clerk of Wayne county, State of Illinois, hereby certify that the above is a true and correct copy of files in my office.

Dated this 25th day of September, 1886.

[Wayne County Seal.]

J. E. WILSON,
County Clerk.

(Endorsed:) Filed September 29th, A. D. 1886. J. A. Jones, clerk.

181 And afterwards, to wit, on September 29th, 1886, came the complainants, by their solicitors, and filed in said clerk's office the depositions of Joseph E. Wilson, county clerk, in this cause; which said depositions, together with the notice that the same were to be taken, are in the words and figures following, to wit:

United States Circuit Court, Southern District of Illinois, *ss.* June Term, 1886.

WM. N. BORAH *et al.* *vs.* JOSEPH E. WILSON *et al.* } In Chancery. Bill for Injunction and Relief.

To Bailey and Sedgwick, attorneys for defendants:

Take notice that on the 24 day of September, 1886, between the hours of 10 o'clock a. m. and -- o'clock p. m., and to be continued from day to day, at Fairfield, before W. P. Bunch, master in chancery, the complainant will proceed to cause to be taken the deposition of Joseph E. Wilson, county clerk, and others, residing in the said county of Wayne, to be read in evidence on the trial of this cause on the part of complainant-, at which time and place above mentioned for the taking of such depositions you can appear and cross-question said witnesses if you shall see fit so to do.

Dated this 13th day of Sept., 1886, Fairfield, Wayne county, Ill.

H. TOMPKINS, BELL AND GREEN,
Att'ys for Complainants.

182 UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

STATE OF ILLINOIS, *Wayne County:*

Be it remembered that on this 24th day of September, 1886, before me, master in chancery in and for Wayne county, did call and cause to be and personally appear before me, at my office, in the city of Fairfield, in the said southern district of Illinois, in the State afore-

said, Joseph E. Wilson, county clerk of Wayne county, and Thos. L. Cooper, of the said city, to testify and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of controversy now depending and undertermined in the circuit court of the United States, in the district aforesaid, at Springfield, Illinois, wherein Wm. N. Borah *et al.* is [are] pl't'ff- and Joseph E. Wilson, county clerk, *et al.*, is [are] def't-.

And the said Joseph E. Wilson and Thomas L. Cooper, being above the age of 21 years and having been by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did make answer to the following interrogatory- put to them and say as follows:

183 JOSEPH E. WILSON being duly sworn, the following questions were asked, with his reply written thereunder:

Question 1st. Give your name, age, and occupation.

Ans. My name is Joseph E. Wilson; my age is 36 years; my occupation is that of county clerk.

2nd. Examine this book shown you, marked "B," and state if it is the record of the proceedings of the board of supervisors in your office of Wayne county. If so, state from what date.

Ans. The book shown me, marked "B," is the record of the board of supervisors, and dates from June, 1860, to June, 1869, and of their proceedings during that period.

3rd. State from the said record how many persons appeared to organize the board of supervisors at the June term, 1867, and give their names.

Ans. The board, at the June term, 1867, was organized by five persons, to wit, Daniel Wingate, Miles H. Harris, J. B. Borah, J. R. Wilson, and Levi N. Cisne.

4th. Examine the record of the former term prior to the
184 June term, 1867, and state how many appeared as the board of supervisors, and give their names.

Ans. At the former term, prior to the June term, 1867, being the March special term, 1867, shows that there was present fifteen persons, to wit, Robert T. Forth, L. M. Cisne, J. C. Williams, A. T. Galbraith, Copeland McKelvy, D. K. Felix, E. W. Mabry, J. W. Atteberry, Adam Rinard, Titus Buffington, Richard White, Wm. N. Borah, S. J. R. Wilson, J. C. Neal, and C. C. Myers.

5th. Examine said record and state if there is any order of record showing any change from the fifteen supervisors to that of the five district supervisors for the government of county affairs.

Ans. I have examined the record and find no order to change from 15 supervisors to that of 5 district supervisors.

J. E. WILSON.

THOMAS L. COOPER being duly sworn, the following questions were asked, with his reply written thereunder:

Question 1st. Give your name, age, and occupation.

Ans. My name is Thomas L. Cooper; my age is 55 years; my occupation, ex-merchant; now a farmer.

185 2nd. State if you are the person named as trustee to hold and deliver the $100,000 of the stock of the Illinois Southeastern Railway Company to the county of Wayne or deliver it back to the railway company on the payment of one hundred dollars; if so, state fully what was done in the matter.

Ans. I was the person named to hold for the county the stock of said railroad, and surrender to said Southeastern road the stock on payment of one hundred dollars. I did not receive the one hundred dollars, and finally, in the year 1884, returned to the county clerk the certificates of stock to the amount of one hundred thousand dollars.

THOMAS L. COOPER.

I, Wm. P. Bunch, master in chancery in and for the county of Wayne, State of Illinois, do hereby certify that the above depositions were taken upon the above notice, hereto attached, signed by H. Tompkins, att'y for pl't'ff-, directed to Bailey and Sedgwick, Peoria, att'ys for the def'ts, dated Sept. 13, 1886; that the witnesses lived and resided in the city of Fairfield, the same being more than one hundred miles from the place of holding the said court.

I further certify that H. Tompkins, att'y for the pl't'ffs,

186 attended with the witnesses, and that——

And afterwards, to wit, on Tuesday, the 5th day of October, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

WILLIAM N. BORAH *et al.*
vs.
Jos. E. WILSON, County Clerk Wayne County, *et al.* } In Equity.

And now, on this 5th day of October, 1886, come the parties, by their counsel, and submit this cause to the court for final hearing on the pleadings and proofs; and the court, having heard and considered the same, as well as the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that the complainants' bill be dismissed with costs, to be taxed.

187 And afterwards, to wit, on Tuesday, the 23rd day of November, at the June term of said court, the following further proceedings were had in said court and entered of record in said cause, to wit:

WM. N. BORAH *et al.*
vs.
Jos. E. WILSON *et al.* } In Chancery.

This day comes William N. Borah, S. W. Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, William B. Hershslinger, and H.

Tompkins, and pray an appeal to the Supreme Court of the United States, not to operate as a supersedeas on their entering into a bond to the defendants in the penalty of one thousand dollars and conditioned as the law directs.

And afterwards, to wit, on November 23rd, in the year last aforesaid, came the complainants in the above-entitled cause and filed in the clerk's office of this court their appeal bond in said cause; which said bond is in the words and figures following, to wit:

Wm. N. Borah, L. W. Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, W. B. Herslinger, and H. Tompkins
vs.
O. P. Collector [Patterson], Co. Collector; C. P. Swigert, *et al.*
} In Chancery.

188 Know all men by these presents that we, the undersigned, A. F. Nesbit, L. W. Trotter, D. W. Barkley, L. D. Leach, H. H. Moore, H. Tompkins, W. H. Geyer, Wm. Landlin, David Clevenger, are held and firmly bound unto the above-named defendants in the sum of one thousand dollars, to be paid to the said defendants, their heirs or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this the second day of Nov., 1886.

Whereas the above-named Wm. N. Borah, L. W. Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, W. B. Herslinger, and H. Tompkins have presented an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois, on the 5th day of October, A. D. 1886: Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

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L. W. TROTTER. [L. S.]
A. F. NESBIT. [L. S.]
D. W. BARKLEY. [L. S.]
L. D. LEACH. [L. S.]
H. H. MOORE. [L. S.]
H. TOMPKINS. [L. S.]
W. H. GEYER. [L. S.]
WM. LANDLIN. [L. S.]
his
DAVID x CLEVENGER. [L. S.]
mark.
R. A. JENKINS. [L. S.]
L. KNOWLES. [L. S.]

STATE OF ILLINOIS, } ss:
Wayne County, }

I, R. E. Mabry, clerk of the circuit court in and for said county and State, do hereby certify that the signatures to the foregoing bond are genuine, and that the parties are well known to me as being far more than ample security for said bond.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Fairfield, this November 22nd, A. D. 1886.

Wayne Co. Seal.

R. E. MABRY,
Circuit Clerk, Wayne Co., Ills.

Approved, but the appeal not to operate as a supersedeas.
Nov. 23rd.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed November 23rd, 1886. J. A. Jones, clerk.

190 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein William N. Borah, Samuel Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, and W. B. Heidenger are complainants and Jos. E. Wilson, county clerk, and O. P. Patterson, county collector and treasurer of Wayne county; Charles P. Swigert, auditor State of Illinois; J. Gross, treasurer State of Illinois; John Ware, Augustus T. Post, Society for Savings, Andrew Potter, John A. Waterman, William B. Skinner, William Bean, John A. Peters, and O. P. Page, treasurer of Biddeford Savings Bank, are defendants, as the same appear- of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this fourth day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and eleventh year.

The Seal of the Circuit Court of the United States, South. Dist. Ill.

J. A. JONES, *Clerk.*

I hereby enter my appearance for appellant- in above cause.

H. TOMPKINS,
Att'y for Appellant-, Fairfield, Ill.

191 *Assignment of Errors.*

The court erred in dismissing complaint [complainants'] bill.
The court erred in not granting the relief prayed.

W. TOMPKINS, Fairfield, Ill.,
BELL & GREEN, Mt. Carmel, Ill.,
Att'y- for Appellants.

Endorsed on cover: S. Illinois C. C. U. S. No. 614. William N. Borah, L. W. Trotter, A. F. Nesbit, Toliver Simpson, J. J. Davis, W. B. Herslinger, and H. Tompkins, appellants, *vs.* Joseph E. Wilson, county clerk, and O. P. Patterson, county collector & treasurer of Wayne county, *et al.* Filed December 13, 1887.